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No. 06-162

In The
Supreme Court of the United States

SANDRA CANO, FORMERLY KNOWN AS "MARY DOE" OF *DOE V. BOLTON*,

Petitioner,

v.

THURBERT E. BAKER, Attorney General of the State of Georgia, PAUL L. HOWARD, JR., District Attorney of Fulton County, Georgia, RICHARD PENNINGTON, Chief of Police of the City of Atlanta,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI AND APPENDIX VOLUME I, PAGES 1 TO 175

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QUESTIONS PRESENTED FOR REVIEW

Sandra Cano, the "Mary Doe" of *Doe v. Bolton* comes before this Court as an original party asking that her judgment be vacated pursuant to FRCP Rule 60(b). Since *Doe*, significant changes in the factual conditions surrounding abortion demonstrate that abortion hurts women as shown by: the sworn testimony of women harmed by abortion; medical articles and studies since 1973 documenting abortion injuries; and, sworn evidence that abortion clinics in fact do not provide the normal doctor-patient relationship anticipated by *Roe v. Wade* and *Doe v. Bolton*. Significant changes also occurred in legal conditions, including changes in the law of forty-six states that have enacted "Baby Moses" laws which transfer the burden of unwanted child care to society, and this Court's Federalism jurisprudence restoring more autonomy to the states. *Doe* is also a case of great national importance, and therefore, the questions presented are:

1. Should the original judgment in *Doe v. Bolton* be vacated under Rule 60 due to the substantially changed factual and/or legal conditions that make it no longer just or equitable for prospective application?

2. Is Petitioner Sandra Cano entitled under Rule 60 to any relief, substantive or procedural?

3. Should the Court, at a minimum, require the district court to hold a hearing to afford fundamental due process that would lead to determining whether *Doe v. Bolton* and *Roe v. Wade* should be re-examined?

4. Does the district court have a role in preparing the factual basis in a Rule 60 motion based on *Agostini*?

PARTIES TO THE PROCEEDINGS

Petitioner is Sandra Cano, the original "Mary Doe" of *Doe v. Bolton*.

Respondent is Thurbert E. Baker, Attorney General of the State of Georgia, as successor in office to Arthur Bolton; Lewis R. Slaton, as District Attorney of Fulton County, Georgia, through his successor in office, Paul L. Howard, Jr.; and, Herbert T. Jenkins, as Chief of Police of the City of Atlanta, through his official successor in office, Richard Pennington.

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OPINIONS BELOW

The opinion of the court of appeals is reported at 435 F.3d 1337 (11th Cir. 2006). App. at 1. The original opinion of the district court was not published, but its opinion upon reconsideration is found at 2005 U.S. Dist. LEXIS 41702, 2005 WL 3881370 (N.D. Ga., Feb. 23, 2005). App. at 12.

JURISDICTION

The judgment of the court of appeals was decided on January 11, 2006. A timely petition for rehearing en banc was denied on March 17, 2006. The jurisdiction of this Court rests on 28 U.S.C. § 1254(1).

STATUTES AND RULES INVOLVED

The pertinent rule is FED. R. CIV. P. 60(b) which states in relevant part:

> Rule 60. Relief from Judgment or Order
>
> (b) . . . On motion and upon such terms as are just, the court may relieve a party . . . from a final judgment, . . . for the following reasons: . . . (5) . . . it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

STATEMENT OF THE CASE

On August 25, 2003, Petitioner Sandra Cano (hereinafter "Cano"), known to this Court as "Mary Doe," of *Doe v. Bolton*, filed a Rule 60 Motion for Relief from Judgment of her 1970 judgment[1] declaring the Georgia abortion statute[2] unconstitutional which this Court affirmed on January 22, 1973.[3] On the same day, this Court also ruled in *Roe v. Wade*,[4] the companion case to *Doe*.

Petitioner Cano filed a Rule 60(b) Motion for Relief from Judgment based on changed factual and legal conditions pursuant to the procedure in *Agostini v. Felton*[5] for overturning one of this Court's own decisions. App. at 176. Cano met all justiciability and jurisdictional requirements and was an original "party" to bring the Motion under Rule 60. No independent jurisdiction is needed.[6] The Motion and Supporting Memorandum of Law included over 5,000 pages of evidence including affidavits from Sandra Cano, Norma McCorvey (the original "Roe" of *Roe v. Wade*), over 1,000 post-abortive women, former abortion clinic personnel, and numerous medical experts. App. at 176.

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[1] *Doe v. Bolton*, 319 F. Supp. 1048 (N.D. Ga. 1970).

[2] GA. CODE ANN. §§ 26-1201 through 26-1203.

[3] *Doe v. Bolton*, 410 U.S. 179 (1973) (hereinafter "*Doe*").

[4] 410 U.S. 113 (1973) (hereinafter "*Roe*").

[5] *Agostini v. Felton*, 521 U.S. 203 (1997) (hereinafter "*Agostini*").

[6] *Charter Township of Muskegon v. City of Muskegon*, 303 F.3d 755, 762 (6th Cir. 2002) (*quoting* MOORE'S FEDERAL PRACTICE § 60.84[1][a] (3d ed. 1997) that "It has been long established that no independent federal jurisdictional basis is needed to support a Rule 60(b) motion proceeding. A Rule 60(b) motion is considered a continuation of the original proceeding.").

On September 8, 2003, the Georgia Attorney General filed a Response based on procedural challenges which the district court did not sustain. The only evidence consisted of Cano's over 5,000 pages of uncontroverted affidavit evidence. After considering the evidence, the district court denied the Rule 60 Motion on March 26, 2004 (App. at 21) stating that it "makes no judgment as to the importance or veracity of the information."[7] The district court made no findings of fact. On April 9, 2004, Cano timely filed a Motion for Reconsideration based on errors of law and facts and manifest injustice. App. at 239. The district court denied the Motion for Reconsideration on February 23, 2005 stating that it "lacked the authority" to grant the Motion. App. at 12. For the first time, the district court attempted to distinguish this Court's lead case of *Agostini v. Felton.*[8]

Cano appealed to the United States Court of Appeals for the Eleventh Circuit, but on January 11, 2006, the court of appeals affirmed the district court's decision[9] and stated:

> Even assuming all the proffered scientific or clinical evidence about the effects of abortion submitted by Cano in support of her Rule 60(b) are true, it does not change the fact that the *district court did not have the authority to reverse the Supreme Court's decisions in Doe or Roe, nor do we.*[10]

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[7] Order Denying Rule 60(b) Motion (March 26, 2004). App. at 26.

[8] 521 U.S. 203 (1997).

[9] 435 F.3d 1337 (11th Cir. 2006). App. at 1-11.

[10] *Id.* at 1342 (emphasis added).

Petitioner Cano sought reconsideration en banc, however, it was denied on March 8, 2006.[11] An extension of time to file for certiorari was granted to July 31, 2006.

INTRODUCTION

This case involves questions of exceptional national importance that can only be decided by the Supreme Court of the United States. In addition, the *Doe* health exception is at the heart of the partial birth abortion cases which are presently before this Court.

By accepting this case also, the Court would have squarely before it the question of whether prospective application of *Doe v. Bolton* remains just and equitable given the changed factual and legal conditions surrounding abortions since 1973. The evidence in this case goes to the heart of the balance that was struck in *Roe v. Wade* and *Doe v. Bolton*. *Doe* and *Roe* effectively foreclosed any other branch of federal or state government, and even lower courts as this case demonstrates, from addressing the substantial medical evidence that abortion hurts women. As the lower courts held, only this Court can reverse one of its own precedents based on changed factual and legal conditions.

Petitioner Cano, the original plaintiff in *Doe v. Bolton,* seeks relief from judgment under Rule 60(b) because her judgment is no longer just. Rule 60(b) allows the Court to consider whether a prior decision remains "equitable" or "just" in light of changed factual and/or legal conditions.

[11] App. at 32-33.

There have been substantial changes in *both* the factual and legal conditions in the last thirty years of experience with legalized abortion and its effect on women. Petitioner respectfully requests a writ of certiorari in this case of great national importance.

REASONS FOR GRANTING THE PETITION FOR CERTIORARI

I. THE COURTS BELOW HELD UNDER *AGOSTINI* THAT ONLY THIS COURT CAN REVERSE ITS OWN *DOE V. BOLTON* PRECEDENT, AND THEREFORE, CERTIORARI SHOULD BE GRANTED TO DETERMINE WHETHER CHANGED FACTUAL AND LEGAL CONDITIONS MAKE *DOE* NO LONGER JUST FOR PROSPECTIVE APPLICATION UNDER RULE 60(b).

In 1973, the Court substantially limited the regulation of abortion by the medical and legislative process; therefore, the Court is the only entity that can truly consider the factual and legal changes concerning abortion since 1973.[12] The court of appeals was very clear that only the Supreme Court could make the decision under an

[12] *Cano v. Baker*, 435 F.3d 1337, 1342 (11th Cir. 2006) (stating neither the district or appellate court can reverse a Supreme Court decision because only it has the prerogative to overrule one of its own decisions); *McCorvey v. Hill*, 385 F.3d 846, 853 (5th Cir. 2005) (Jones, J., concurring) (stating: "One may fervently hope that the Court will someday acknowledge such developments and re-evaluate *Roe* and *Casey* accordingly. That the Court's constitutional decision making leaves our nation in a position of willful blindness to evolving knowledge should trouble any dispassionate observer. . . .").

Agostini-type Rule 60(b) motion.[13] The court of appeals stated:

> Even assuming all the proffered scientific or clinical evidence about the effects of abortion submitted by Cano in support of her Rule 60(b) are true, it does not change the fact that the district court did not have the authority to reverse the Supreme Court's decisions in *Doe* or *Roe*, nor do we.[14]

The district court concluded on reconsideration that the "*Agostini* opinion specifically affirms the long-standing principle that only the Supreme Court may overrule its own precedent. In fact, the *Agostini* Court noted that the trial court had acted properly in refusing to reinterpret directly binding precedent. Thus, this court did not err. . . ."[15] In short, Cano has no place else to go but to this Court with this legally sufficient and compelling evidence because no one else has the authority to act.

It is important for this Court to review an area of law that it has constitutionalized because it is the only court that can. In 2003, Norma McCorvey, the "Roe" of *Roe v. Wade*, filed a similar Rule 60(b) Motion asking the court to overturn her case.[16] One of the things that make this case so important and unusual is that both women whose cases brought abortion on demand and the gruesome partial birth abortion procedure to America are asking this Court

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[13] *Cano v. Baker*, 435 F.3d 1337, 1342 (11th Cir. 2006).

[14] *Id.* at 1342.

[15] *Cano v. Baker*, 2005 U.S. Dist. LEXIS 41702 at 8.

[16] *McCorvey v. Hill*, 385 F.3d 846 (5th Cir. 2004), *cert. denied*, 543 U.S. 1154 (2005).

to overturn their cases. Judge Jones discussed the "perverse result"[17] that an issue that affects millions of women and unborn babies cannot be heard or effectively debated:

> . . . because the Court's rulings have rendered basic abortion policy beyond the power of our legislative bodies, the arms of representative government may not meaningfully debate McCorvey's evidence. The perverse result of the Court's having determined through constitutional adjudication this fundamental social policy, which affects over a million women and unborn babies each year, is that the facts no longer matter. . . .[18]

The facts do matter. What this Court did not know in 1973 is now knowable through advances in medicine, science, and technology. The Supreme Court has frozen abortion law based on obsolete 1973 assumptions and prevented the normal regulation of the practice of medicine. Although this Court believed it was helping women, the real life experiences of women over the last thirty years now demonstrate that abortion hurts women. This Court is the sole legal entity responsible for protecting women and children from the harm of abortion, which the evidence shows is occurring daily on a vast scale, and therefore, justice requires review of its decision in *Doe v. Bolton* and its companion case *Roe v. Wade*.

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[17] *Id.* at 852 (Jones, J. concurring).

[18] *Id.*

II. WHEN AN IMPORTANT AREA OF SOCIAL RESPONSIBILITY IS CONSTITUTIONALIZED, AFFECTING THE HEALTH OF MILLIONS OF WOMEN AND EFFECTIVELY WITHDRAWING IT FROM THE LEGISLATIVE ARENA AND LOWER COURTS, THIS COURT HAS A SPECIAL DUTY TO MONITOR SUBSTANTIALLY CHANGED CONDITIONS TO ENSURE JUSTICE AND PROTECT WOMEN'S HEALTH.

It is appropriate to grant a Rule 60(b) Motion when the party seeking relief can show "a significant change *either* in factual conditions or in law. A court may recognize subsequent changes in *either* statutory or decisional law."[19] This is especially true where changed circumstances have turned the law into an "instrument of wrong."[20] There have been significant changes in both factual circumstances and law since the original judgment in *Doe*. In the Record,[21] there is legally sufficient and substantial evidence of changed factual and legal conditions, which establishes that *Doe* has become an "instrument of wrong"

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[19] *Agostini v. Felton*, 521 U.S. 203, 215 (1997) (*citing Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367 (1992) and *Railway Employees v. Wright*, 364 U.S. 642 (1961)) (emphasis added).

[20] *Railway Employees v. Wright*, 364 U.S. 642, 647 (1961). The purpose of Rule 60 is to achieve justice. *Charter Township of Muskegon v. City of Muskegon*, 303 F.3d 755, 760 (6th Cir. 2002). As the prophet Isaiah stated: "I will make justice the measuring line. . . . " Is. 28:14-22 at 17.

[21] Substantial portions of which have already been filed with the Clerk due to the importance of this case. A Rule 32 filing letter was used due to the extensive nature of the evidence required to document changed factual conditions, which is too voluminous to attach here. The Rule 32 filing letter summarizes the most important evidence. App. at 216.

because it results in injuries to many innocent victims.[22] Accordingly, it is no longer just or equitable to give *Doe* prospective application. Application of the doctrine of *stare decisis* does not lead to a contrary result.[23]

Petitioner's evidence met the established legal standard in *Agostini v. Felton.*[24] In *Agostini,* this Court held that it had sole jurisdiction and authority to overrule its prior twelve-year-old decision and a companion case.[25] Based on *Agostini,* the threshold issue is "whether the factual *or* legal landscape has changed since . . . [the prior ruling of the Court]."[26] Petitioner believes that both the factual and legal landscape have significantly changed thereby warranting certiorari.

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[22] *See Railway Employees v. Wright*, 364 U.S. 642, 647 (1961).

[23] *Stare decisis* is at its weakest when interpreting the Constitution because such "interpretation can be altered only by constitutional amendment or by overruling our [the Court's] prior decisions." *Agostini v. Felton*, 521 U.S. 203, 235 (1997). In constitutional cases, "correction through legislative action is practically impossible," *Payne v. Tennessee*, 501 U.S. 808, 828 (1991), thus leading to what Judge Jones called the "perverse results." *McCorvey v. Hill*, 385 F.3d 846, 852 (5th Cir. 2004) (Jones, J., concurring), *cert. denied*, 543 U.S. 1154 (2005).

[24] 521 U.S. 203, 235 (1997).

[25] *Agostini v. Felton*, 521 U.S. 203 (1997). Norma McCorvey, the "Roe" of *Roe v. Wade*, also filed an Affidavit in this case supporting reversal of *Doe* and her own case. App. at 44.

[26] *Agostini v. Felton*, 521 U.S. 203, 216 (1997) (emphasis added).

A. Significantly Changed Factual Conditions Since *Doe* and *Roe* Demonstrate that Abortion as Practiced Results in Extensive Psychological and Physical Harm to Women.

Because abortion was illegal in most states and relatively rare in 1973,[27] no evidence existed then regarding how widespread, legalized abortion would actually affect women. The Court assumed that abortion would be good for women and made many other non-evidence based assumptions. The Court assumed abortion was like other medical procedures and as safe as childbirth because the long-term effects of abortion on women were unknown at the time.[28] Based on an affidavit from Norma McCorvey, the "Roe" of *Roe v. Wade*, the Court knew that unwanted pregnancies could put severe pressure on women and that women needed help and compassion in such situations.[29] Petitioner's substantial evidence outlines the changed factual conditions regarding the physical and psychological consequences of abortion to women. The evidence from post-abortive women now shows abortion is a short-term "solution" with long-term negative consequences.[30]

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[27] *Roe v. Wade*, 410 U.S. 113, 118, n.2 (1973).

[28] *Id.* at 149-50.

[29] *Id.* at 153.

[30] For example, Scherrie, "Twenty-five years later, I still cannot talk about it without tears and pain in my heart. It all looks simple on paper and seems like an easy way out of a bad spot, but no one tells you that the easy way out will cost you later in emotional damage and physical problems." (R. 1351). Nora, "It never goes away and you will always think of what could have been and the anger of how the government allows this hideous procedure." (R. 314). L.M.C., "[I]t hurts women physically and emotionally! That it does not end when you leave the clinic." (R. 305). Dianne, "I didn't know that the hurt would never go away." (R. 398). *See also* App. at 64-65, 80, 87, 93, 97, and 127 (hereinafter, references to

(Continued on following page)

A subsequent abortion decision, *Planned Parenthood v. Casey*,[31] placed abortion in the range of choices that are "central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment."[32] However, the Court of Appeals for the Fifth Circuit recently cited testimony that abortion as practiced is "almost always a negative experience for the patient. . . ."[33] In *Bell*, the Court of Appeals struck down Texas abortion facility regulations that required Texas abortions to be done in a manner that enhanced women's "self-esteem" and "dignity."[34] Contrary to the non-evidence based assumption in *Casey*, the decision in *Bell* and the Women's Affidavits refute the assumption that abortion enhances female dignity, self-esteem, and autonomy.[35]

Abortion has negative psychological effects on women.[36] As Petitioner Cano's Affidavit and the testimony of more than 1,000 women[37] who have experienced

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Women's Affidavits not in the Appendix use R. and the bate stamp number attached to the original Rule 60 Motion, which is the easiest way to find individual affidavits that are not in the Appendix).

[31] *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).

[32] *Id.* at 851.

[33] *Women's Medical Center v. Bell*, 248 F.3d 411, 418 (5th Cir. 2001).

[34] *Id.*

[35] For example, Camelia, "I have suffered with low self-esteem, self-hatred, suicidal impulses, constant anxiety (especially about sex and about making decisions). . . ." App. at 133.

[36] For example, Nicole, "Abortion is so devastating that I would never do it again – even at the cost of my own life." App. at 83.

[37] R. 13-1705, hereinafter referred to as "Women's Affidavits." Petitioner submitted over 1,000 affidavits with her original Rule 60(b) Motion which are on file with the Clerk. However, at the present time, Counsel for Petitioner has over 2,000 affidavits from women all across the United States and that number continues to grow.

abortion demonstrate there is a vast gulf between supporting the idea of an abortion and experiencing one. These Affidavits of more than 1,000 women constituted at the time of filing the largest body of direct, sworn evidence in the world on the adverse effects of abortion on women.[38] Ironically, the abortion itself often causes a destructive cycle which may lead to more abortions.[39] Women are overwhelmed with the guilt and depression of abortion for years after having an abortion.[40] In the Women's Affidavits, post-abortive women were asked: "How has your abortion affected you?"[41] The women's responses show the Court the devastation caused by their abortions.[42] The Affidavit of Dr. David Reardon, one of the world's leading

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[38] Excerpts from one hundred Women's Affidavits are included for the Court's general review in the Appendix. App. at 56-175. All of the more than 1,000 Women's Affidavits are filed with the Clerk of the Supreme Court under Rule 32.1 and are in the Record at R. 13-1705. In addition, Petitioner has requested to lodge as non-Record materials under Rule 32.3 another approximately 1,000 Affidavits subsequently received by counsel for Petitioner and more Affidavits continue to be received from women hurt by abortion.

[39] *See generally* Affidavit of Theresa Burke, Ph.D. filed with the Clerk under Rule 32.1. (R. 1723-1973).

[40] For example, Brandy, "No one told me that I would hear cries in the middle of the night." (R. 1407). Beverly, "It's not a quick and easy solution. Don't do it! It will haunt you the rest of your life." App. at 97. *See generally,* the Women's Affidavits (R. 13-1705); the Affidavit of Theresa Burke, Ph.D. (R. 1723-1973); the Affidavit of David Reardon, Ph.D. (R. 1975-2108) and Exhibits to Affidavit of David Reardon, Ph.D. (R. 2109-4515); the Client Intake Records From Pregnancy Care Centers (R. 4516-5388); the Affidavit of Carol Everett, former abortion provider (R. 5390-5396).

[41] "Women's Affidavits." R. 13-1705.

[42] For example, Amy Marie, "It devastated me. I had nightmares, flashbacks, fits of rage, uncontrollable crying, trouble sleeping, and could not look at pregnant women or children without feeling hurt, anger, and guilt." (R. 1302).

experts on the effects of abortion on women, and the Affidavit of Dr. Theresa Burke, a clinical psychotherapist who has counseled hundreds of post-abortive women, further demonstrate the devastating psychological consequences of abortion.[43]

Abortion has also had negative physical effects on women. As the women's testimony and the medical evidence demonstrate, there are many physical complications that can result from abortion.[44] These complications include, but are not limited to: increased bleeding in subsequent pregnancies, infertility, miscarriages, ectopic pregnancy, prematurity, endometriosis, pelvic inflammatory disease, uterine perforations, genital tract infection,

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[43] *See* the Affidavit of David Reardon, Ph.D., filed with the Clerk of the Court under Rule 32.1 (R. 1975-2108), Exhibits to Affidavit of David Reardon, Ph.D. (R. 2109-4515) (citing over 300 medical and scientific articles or studies, Dr. Reardon stated: "Newly found research has discovered that women who abort, compared with women who carry their pregnancy to term, are more likely to require psychiatric care, to suffer from anxiety, sleep disorders, sexual dysfunction, eating disorders, promiscuity, depression, and other negative emotions, which can cause behavioral problems in the children born to them subsequently. They are more likely to remain on Medicaid longer, to have more subsequent health care claims, and to have more subsequent pregnancies and miscarriages. In addition, aborting women are more likely to commit suicide, abuse drugs or alcohol, and have higher rates of divorce.") (footnotes omitted); the Affidavit of Theresa Burke, Ph.D. (R. 1723-1973). The Rule 32.1 filing letter with a Summary of the Evidence is in App. at 216-235.

[44] Physical complications from all types of abortions, as described in 1 GALE ENCYCLOPEDIA OF MEDICINE 12 (2002), include "uncontrolled bleeding, infection, blood clots accumulating in the uterus, a tear in the cervix or uterus, missed abortion where the pregnancy continues, and incomplete abortion where some material from the pregnancy remains in the uterus."

placenta previa, and retention of placenta.[45] These complications are not only hazardous to the immediate well being of the mother, but they can also have lasting devastating effects on her health and the health of her subsequent children.

In addition, suicide is one of the effects of abortion.[46] The suicide rate for women who have had an abortion is significantly higher than for those who carry their pregnancies to term.[47] Abortion can lead to depression, anxiety, and other mental disorders, and ultimately many women turn to suicide. As the women's testimonies repeatedly demonstrate, many women feel they do not deserve to live after an abortion. Dangerously, the shame and guilt women feel often prevents them from seeking help. The resulting feeling of isolation leads to severe depression and to search for a "way out," such as suicide.[48] The Record includes compelling scientific and medical evidence since 1973 that clearly demonstrates that human life begins at conception,[49] and therefore, many women express great

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[45] *See* Affidavit of David Reardon, Ph.D. (R. 1975-2108 at 2065-2066), Exhibits to Affidavit of David Reardon, Ph.D. (R. 2109-4515); *see also* the Women's Affidavits (R. 13-1705).

[46] For example, Kathy, "I would tell them about the hell I went through. About hearing babies cry when none were around, being suicidal, an alcoholic." (R. 560). Women specifically testified of suicidal thoughts. App. at 85, 105, 120, 122, 128, 133, 164, and 166 among many others.

[47] *See* Affidavit of David Reardon, Ph.D. (R. 1975-2108), Exhibits to Affidavit of David Reardon, Ph.D. (R. 2109-4515).

[48] *See* the Women's Affidavits (R. 13-1705); the Affidavit of Theresa Burke, Ph.D. (R. 1723-1973); the Affidavit of David Reardon, Ph.D. (R. 1975-2108), Exhibits to Affidavit of David Reardon, Ph.D. (R. 2109-4515).

[49] *See* Scientific and Medical Analysis. (R. 5397-5546).

remorse over the "murder" of their own child.[50] In theory, abortion is supposed to be free and voluntary, but like assisted suicide, the "knowing and responsible mind is harder to assess,"[51] than one would anticipate. The Court may come to believe after reviewing the evidence that abortion should be left to the states as the Court did with the issue of assisted suicide.[52]

B. Significantly Changed Legal Conditions Since *Doe* and *Roe*, Including Changes in the Law of Federalism and "Baby Moses" Laws in Forty-Six States, Make *Doe* No Longer Just.

In recent years, significant changes in the law of federalism justify returning to the states the decision whether to allow or prohibit abortion. Before *Doe* and *Roe* constitutionalized abortion, health and safety issues and specifically abortion were traditional state and local concerns.[53] Beginning in 1995 with *United States v. Lopez*,[54]

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[50] For example, Wilma, " . . . you feel like you have committed murder." App. at 66. For further references by the women to "murder" *see* App. at 56, 73, 76, 82, 85, 87, 89, 90, 92, 93, 99, 107, 112, 113, 116, 117, 126, 132, 134, 138, and 141 among many others.

[51] *Washington v. Glucksberg*, 521 U.S. 702, 784 (1997) (Souter, J., concurring).

[52] *Washington v. Glucksberg*, 521 U.S. 702 (1997) (finding no constitutional right to assisted suicide). This issue was discussed in greater detail in Petitioner's Rule 60 Motion. App. at 205-206 and Memorandum of Law at 34-44. (Doc. 1).

[53] *Roe*, 410 U.S. at 139-40 n.34-37; *see also Webster v. Reproductive Health Services*, 492 U.S. 490, 520 (1989) (commenting that *Roe*'s framework pertained to "areas of medical practice traditionally subject to state regulation").

[54] 514 U.S. 549 (1995).

there has been a renewed emphasis on the judicial enforcement of federalist boundary lines.[55] While the Court has largely focused on Congress in *Lopez* and its progeny, the doctrine of federalism applies to the dangers of overreaching national power among all branches of government. In fact, "the danger to federalism may be greater from the federal courts than from Congress simply because judicial intervention is anti-democratic" such that "the states have relatively little recourse."[56] The common thread among the line of federalism cases involves the Court's restriction of the expansion of national power into traditional state law matters such as education, crime, family law and health issues, the area where abortion clearly falls. *Doe* and *Roe* are contrary to these new federalism cases which arose after *Casey,* and therefore, these cases have made *Doe* and *Roe* "obsolete."[57] The Court's application of *Lopez* federalism to *Doe* and *Roe* would not only properly return this traditional state law matter to the states, but it would also restore the democratic processes to this issue of great controversy, which has not been resolved as the plurality in *Casey* hoped.[58]

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[55] *See, e.g., United States v. Morrison*, 529 U.S. 598 (2000); *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1995); *United States v. Lopez*, 514 U.S. 549 (1995).

[56] J. Harvie Wilkinson III, *The 2000 Justice Lester W. Roth Lecture: Federalism for the Future*, 74 S. CAL. L. REV. 523, 536 (2001).

[57] In 1992, before the new Federalism decisions, the Court held: "No development of constitutional law since the case was decided has implicitly or explicitly left *Roe* behind as a mere survivor of obsolete constitutional thinking." *Casey*, 505 U.S. at 857.

[58] The *Casey* plurality unsuccessfully "call[ed] the contending sides to end their national division. . . ." *Casey*, 505 U.S. at 867.

In addition, there have been significant changes in the statutory law since *Roe*. In 1999, Texas pioneered legislation whereby a parent can leave a child who is less than sixty days old with a hospital or emergency medical service provider.[59] Since 1999, forty-five other states have enacted similar legislation called "Baby Moses" or "safe haven" laws.[60] Forty-six states are now willing to completely relieve the burden of childcare for all women. For example, Georgia passed the Safe Place for Newborns Act

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[59] TEX. FAM. CODE ANN. § 262.302.

[60] *See* ALA. CODE § 26-25-1 et seq. (2000); ARIZ. REV. STAT. § 13-3623.01 (2001); ARK. CODE ANN. § 9-34-202 (Michie 2001); CAL. HEALTH & SAFETY CODE § 1255.7 (Deering 2000); COLO. REV. STAT. § 19-3-304.5 (2000); CONN. GEN. STAT. § 17a-57 et seq. (2000); DEL. CODE ANN. tit. 16 § 907A (2001); FLA. STAT. ANN. § 383.50 et seq. (West 2000); GA. CODE ANN. § 19-10A-1 et seq. (2002); IDAHO CODE § 39-8201 et seq. (2001); § 325 ILL. COMP. STAT. 2/1 et seq. (West 2001); IND. CODE ANN. § 31-34-2.5-1 et seq. (Michie 2000); IOWA CODE § 233.1 et seq. (2001); KAN. STAT. ANN. § 38-15,100 (2000); KY. REV. STAT. ANN. § 405.075 (Michie 2002); LA. CH. CODE art. 1149 et seq. (West 2004); ME. REV. STAT. ANN. tit. 17-A § 553 (West 2004); MD. CODE ANN. CTS. & JUD. PROC. § 5-641 (2002); MASS. GEN. LAWS ch. 119, § 39 1/2 (2004); MICH. COMP. LAWS § 750.135 (2000); MINN. STAT. § 145.902 (2000); MISS. CODE ANN. § 43-15-201 et seq. (2001); MO. REV. STAT. § 210.950 (2002); MONT. CODE ANN. § 40-6-401 et seq. (2001); NEV. REV. STAT. § 432B.630 (2001); N.H. REV. STAT. ANN. § 132-A:1 et seq. (2003); N.J. STAT. ANN. § 30:4C-15.5 et seq. (West 2000); N.M. STAT. ANN. §§ 24-22-2 et seq. and 30-6-1 (Michie 2001); N.Y. PENAL § 260.03; PENAL § 260.15; and, SOC. SERV. § 372-g (2000); N.C. GEN. STAT. § 7B-500 (2001); N.D. CENT. CODE § 50-25.1-15 (2001); OHIO REV. CODE ANN. § 2151.3515 et seq. (Anderson 2001); OKLA. STAT. tit. 10 § 7115.1 (2001); OR. REV. STAT. § 418.017 (2001); PA. STAT. ANN. tit. 23 § 6501 et seq. (West 2002); R.I. GEN. LAWS § 23-13.1-1 et seq. (2001); S.C. CODE ANN. § 20-7-85 (Law. Co-op. 2000); S.D. CODIFIED LAWS § 25-5A-27 et seq. (Michie 2001); TENN. CODE ANN. § 68-11-255 (2001); TEX. FAM. CODE ANN. § 262.301 et seq. (West 1999); UTAH CODE ANN. § 62A-4a-801 et seq. (2001); VA. CODE ANN. § 18.2-371.1 (Michie 2003); WASH. REV. CODE § 13.34.260 (2002); W. VA. CODE § 49-6E-1 et seq. (2000); WIS. STAT. ANN. § 48.195 (West 2001); WYO. STAT. ANN. § 14-11-101 et seq. (Michie 2003).

of 2002[61] whereby a mother may place her baby in the custody of the staff at a medical facility after birth.[62]

In *Roe,* the Court was concerned with imposing upon the mother "a distressful life and future . . . associated with the unwanted child."[63] Now, the mother can choose to be free of the burdens or blessings of raising a child without killing the child and without the subsequent physical and psychological damage to herself.

Similarly in *Casey,* the Court stated: "The destiny of the woman must be shaped to a large extent on her own conception of her spiritual imperatives and her place in society."[64] A woman's "destiny" can still be shaped by her own conception of her place in society because she can separate herself from the child if the child is still "unwanted" at birth. She has the liberty to separate herself from the child without the guilt and shame that comes from what many women later perceive as the intentional killing of the woman's own child.[65] If her circumstances improve over time, she is free to reunite with her child, if she so desires, and the child has not yet been adopted. Her

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[61] GA. CODE ANN. § 19-10A-1 et seq. (2002).

[62] *Id.* § 19-10A-4.

[63] The Court stated that " . . . a distressful life and future. . . . Psychological harm may be imminent. Mental and physical health may be taxed by child care. There is also the distress for all concerned, associated with the unwanted child, and there is the problem of bringing a child into a family already unable, psychologically and otherwise, to care for it." *Roe,* 410 U.S. at 153.

[64] *Planned Parenthood v. Casey,* 505 U.S. 833, 852 (1992).

[65] For example, Shawn, " . . . constant (almost daily) thought about the tragic manner in which my baby was killed, and extreme guilt." App. at 90. *See also* App. at 95, 99, 102, 112, 113, and 115 among many others.

decision that she cannot care for the child is now reversible, not irrevocable as with abortion. Her range of "destiny shaping choices" has expanded, her "spiritual imperatives" are enhanced, and her liberty is now greater. She is no longer limited to the *Roe* choice of a "distressful life and future" or killing her child through abortion.

If *Doe* and *Roe* were vacated, some states would allow abortion and some states would restrict abortion to some degree.[66] This would more accurately reflect the democratic diversity of America, yet women would not be without alternatives. Because of Baby Moses laws, a social compromise between the concept of a productive life in society without the child and avoidance by the woman of the consequential damage that killing the child can cause her is now possible. If society is willing to bear the burden of childcare, it should be able to restrict abortion. Unwanted "pregnancies" no longer mean unwanted "children."

C. The Underlying Assumptions in *Doe*, *Roe*, and *Casey* Have Proven Unworkable in Practice.

Casey recognized that one of the reasons a case should be overruled is if it proves to be unworkable in practice.[67] The changed factual conditions go to the heart of *Doe*'s and *Roe*'s assumptions and support Cano's Rule 60(b) Motion

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[66] For example, Hawaii has passed a bill to keep abortion legal if *Roe* were overturned. HAW. REV. STAT. § 453-16 (2006). South Dakota has passed a ban on abortion except to save the life of the mother. S.D. CODIFIED LAWS §§ 22-17-7 to 22-17-12 (Michie 2006). Louisiana has passed a ban if *Roe* were reversed. LA. REV. STAT. § 40:1299.30 (2006).

[67] *Casey*, 505 U.S. at 854.

because the 1973 judicial assumptions are not the reality of abortion practice today.

1. Abortion as Practiced Does Not Involve a Normal Doctor-Patient Relationship nor a Truly Voluntary, Informed Private Decision Between a Woman and Her Doctor.

The real life experiences of the women who have had abortions and the individuals who have worked in abortion clinics since 1973 show that there is not usually a normal doctor-patient relationship and that the abortion industry does not adequately protect women.[68] As the women's testimony demonstrates, most women never see their abortionist until the procedure is being performed.[69]

At the heart of *Doe* and *Roe* is the assumption that the abortion decision should be between a woman and her doctor.[70] The sworn testimony of post-abortive women and personnel in abortion clinics shows that the abortion industry (1) fails to adequately provide women with the

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[68] For example, M.E.A., "I was never told that I could be, and was in labor for 18 hours, delivered baby with no one present. Nurse came in room with doctor, umbilical cord was cut, baby placed in bucket on food tray cart in my room." (R. 013). *See also* Rule 60 Motion, paragraph 24, App. at 194 and Affidavit of Norma McCorvey, App. at 44-55; Affidavits of more than one thousand Post-Abortive Women (R. 13-1705); Affidavit of Theresa Burke, Ph.D. (R. 1723-1973); Affidavit of David Reardon, Ph.D. (R. 1975-2108); Client Intake Records for Pregnancy Care Centers (R. 4516-5388); Affidavit of Carol Everett, former abortion provider (R. 5390-5396); and, the Report of the South Dakota Task Force to Study Abortion at App. 289-411.

[69] R. at 128, 174, 228, 235, and 2163 among many others.

[70] "All these are factors the woman and her responsible physician necessarily will consider in consultation." *Roe*, 410 U.S. at 153.

protections of a true doctor-patient relationship; (2) fails to provide women with the information necessary to truly make an informed decision regarding the procedure; (3) fails to maintain the normal standards of health, safety, and professionalism required of medical personnel; (4) fails to protect the mental and physical safety of women; (5) fails to fully and fairly inform patients about the nature of the abortion procedure – that the unborn child is a baby and not just a mass of cells; and, (6) regularly misleads or deceives women regarding the nature and development of their unborn children.[71]

2. Abortion Is Often the Result of Coercion from Relatives, Sexual Partners, or Circumstances.

Doe is not workable because of other practical flaws that go to the heart of the liberty interest. For example, women are frequently coerced. The Supreme Court in *Roe* and *Casey* assumed that abortion would be a voluntary choice. Rather than being the result of a knowing,

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[71] Women were also asked, "Were you adequately informed of the nature of abortion?" Typical responses demonstrate that they were not. For example, Paula, "I was not told about the years of emotional torment I would experience." (R. 81). Tina, "No, I was not told anything about abortion. . . . No one told me of the risks I was taking." (R. 164). *See* Affidavit of Norma McCorvey, App. at 44-55; the Affidavits of more than 1,000 Post-Abortive Women (R. 13-1705); the Affidavit of Theresa Burke, Ph.D. (R. 1723-1973); the Affidavit of David Reardon, Ph.D. (R. 1975-2108), Exhibits to Affidavit of David Reardon, Ph.D. (R. 2109-4515); the Client Intake Records From Pregnancy Care Centers (R. 4516-5388); the Affidavit of Carol Everett, former abortion clinic worker (R. 5390-5396). Women were also asked: "Were you adequately informed of the consequences of abortion?" Typical responses demonstrate that they were not. (R. at 24, 32, 34, 55, 85, 99, 124, and 137 among many others).

voluntary, dignity-enhancing woman's choice, the women's testimonies reveal that abortion is almost always the result of pressure or coercion from sexual partners, family members, abortion clinic workers or abortionists, or circumstances.[72] Many women testify that they would have never considered an abortion, if it were not legal. The "abortion choice" gave freedom to others to pressure them into something they did not want and later deeply regretted.[73]

3. Women Are Left Alone to Deal with the Problem of Perceived Guilt.

In addition, there is no true liberty for women because guilt is another consequence of abortion. There are three typical responses to guilt: punishment, including self-punishment, forgiveness, and denial. Denial is a psychological coping mechanism, which can be effective in the short-run, but eventually leads to problems.[74] Whatever

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[72] Women's Affidavits show pressure or coercion when asked, "Did anyone pressure you into having an abortion?" For example, Jennifer, "Yes, my family and the counselor at the clinic." (R. 614). Janet, "Yes. Mostly my parents but also my then boyfriend." (R. 677). Cori Elizabeth, "Yes, my fiancé at the time." (R. 825). *See also* R. at 325, 338, 395, 415, and 433 among many others.

[73] For example, Janice, "Because of the fear I lived under perpetrated by my ex-husband, I chose to have the abortion to avoid any more of his wrath and terror . . . it has affected me emotionally to this day." App. at 96.

[74] *See* Affidavit of Theresa Burke, Ph.D. which "explains some of the human defense mechanisms [post-abortive] women experience in various ways such as suppression, repression, rationalization, reaction formation, introjection, undoing, projection, provocative behavior, displacement, conversion, withdrawal, regression, deflection, and denial." Rule 32.1 Filing Letter, App. at 216. (R. 1723-1973).

the legal status of the "fetus," "millions of Americans believe that life begins at conception. . . ."[75] Thus, many women who have abortions feel or will feel guilt about the procedure at some point in their life, often years later. The Supreme Court has never dealt with this perceived guilt issue. The Court cannot assure a woman she has not killed her baby since the Court itself has not "resolve[d] the difficult question of when life begins."[76]

If even a conservative ten percent of women suffer severe psychological injury at some point in their life, then at least 100,000 women a year could suffer needless trauma, especially now that society will care for all children.[77] Petitioner's evidence demonstrates the actual figure is much higher. While the initial reaction to an abortion may be relief for some, though certainly not all, this "relief" is due to the end of a very tragic, pressure packed, emotionally conflicted situation. Merely making the decision sometimes produces some temporary relief, but the evidence now shows the relief is not long-lasting for millions of women.[78] Because of *Doe*, *Roe*, and *Casey*, normal social controls and investigations, experiments,

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[75] *Stenberg v. Carhart*, 530 U.S. 914, 920 (2000); *see also* Women's Affidavits. R. 13-1705

[76] *Roe*, 410 U.S. at 159.

[77] Care Net and other pregnancy resource centers attest that their organizations had over 100,000 women in post-abortion recovery programs in 2004 alone. Brief of Amici Curiae of Nurturing Network, Heartbeat International, Care Net, National Institute of Family and Life Advocates, and Abortion Recovery International Network supporting Petitioner Norma McCorvey in her Rule 60(b) Motion, 2005 WL 319933.

[78] *See* Affidavit of Theresa Burke, Ph.D., Rule 32.1 Filing Letter at App. 216. (R. 1723-1973).

and consumer protection cannot occur. The *Roe* Court has frozen the abortion debate around what it knew in 1973. If a medical procedure this Court once thought beneficial in fact hurts women, certiorari should be granted.

III. FOR JUDICIAL ECONOMY AND THE GOOD OF THE NATION, THIS CASE SHOULD BE HEARD WITH THE PARTIAL BIRTH ABORTION CASES IN WHICH THE COURT HAS ALREADY GRANTED CERTIORARI BECAUSE TOGETHER THOSE CASES AND THIS ONE GO TO THE HEART OF THE HEALTH EXCEPTION ESTABLISHED IN *DOE V. BOLTON*.

Abortion issues are very complex, fact intensive medical issues involving national and state policy best left now to the legislative branches of state and federal government. Prior to *Roe* and *Doe*, health issues such as abortion were traditionally state issues.[79] This Court should grant certiorari and re-evaluate *Doe v. Bolton* and its health exception considering the extensive evidence that Congress heard and its findings of fact before enacting the Partial Birth Abortion Ban Act of 2003.[80] It is clear Congress recognizes problems with the health exception.[81]

As a co-equal branch of government, deference should be given to Congress' findings which were based on extensive

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[79] *See Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 204 (1824) recognized that under what was later called the state's "police power" the states could regulate "health laws of every description." *Id.* at 203.

[80] Partial Birth Abortion Ban Act of 2003, 18 U.S.C. § 1531.

[81] *See id.*

hearings and evidence.[82] Congress has drawn reasonable inferences based on substantial evidence and post-abortive women testify based on their real life experiences that abortion hurts women physically, emotionally, and psychologically. Congressional findings should particularly be given deference in medical or health issues.[83] Congress is "an institution better equipped to amass and evaluate the vast amounts of data bearing on such an issue."[84]

In addition, state legislatures are examining the effects of abortion on women. South Dakota recently banned abortion based on the negative health consequences to women[85] and several other state legislatures are considering or have considered similar legislation.[86]

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[82] *Turner Broadcasting System, Inc. v. FCC* (*Turner II*), 520 U.S. 180, 195 (1997) (stating "'courts must accord substantial deference to the predictive judgments of Congress . . .'" and that its "sole obligation is 'to assure that, in formulating its judgments, Congress has drawn reasonable inferences based on substantial evidence'").

[83] *See, e.g.*, *Jones v. United States*, 463 U.S. 354, 365 (1983) (stating courts should "pay particular defense to reasonable legislative judgments" in a case where congressional findings that individuals acquitted by reason of insanity were likely to be dangerous); *Marshall v. United States*, 414 U.S. 417, 427 (1974) (stating "courts should be cautious not to rewrite legislation" in case where Congress determined that drug addicts were less likely to be rehabilitated); *Lambert v. Yellowsley*, 272 U.S. 581, 294-95 (1926) (deferring to Congress that alcohol had no medicinal uses).

[84] *Walters v. National Ass'n of Radiation Survivors*, 473 U.S. 305, 330 (1985) (rejecting procedural due process challenge on statutory limitation of fees paid to attorneys who represent veterans on veteran benefit claims).

[85] S.D. CODIFIED LAWS §§ 22-17-7 to 22-17-12 (Michie 2006).

[86] For example, Alabama, Indiana, Georgia, Kentucky, Louisiana, Missouri, Michigan, Mississippi, Ohio, Oklahoma, Tennessee, and West Virginia.

Louisiana passed legislation indicating that it would ban abortion if *Roe* were overturned.[87]

South Dakota recently made substantial and detailed findings on the effects of abortion after hearing extensive evidence from both sides.[88] This led to a ban on abortion except to save the life of the mother. After hearing all of the evidence from experts and post-abortive women, the Task Force stated:

> Further, the Task Force finds that the pre-abortion counseling provided often does not prepare women who have abortions for the psychological outcomes they may experience after their abortions. In addition, women who receive little or no information about possible emotional health risks of this procedure may significantly compromise their mental health and the quality of their lives for years to come. Due to the very limited information disclosed by abortion providers, women are not fully aware that abortion carries with it the potential to damage their physical, emotional, interpersonal, and spiritual well-being.[89]

Based on all of the evidence, the Task Force concluded "that to fully protect the rights, interests, and health of the mother and the life of her unborn child, a ban on abortions is required."[90] In this case, the Court now has the benefit of fact-finding by Congress, the states, and the

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[87] In June 2006, Louisiana enacted S.B. 33. LA. REV. STAT. § 40:1299.30 (2006).

[88] Report of the South Dakota Task Force to Study Abortion. *See* complete Report at App. 289-411.

[89] *Id.* at 368-369.

[90] *Id.* at 407.

real life experiences of post-abortive women that abortion hurts women.

CONCLUSION

This is a case of national importance that can only be decided by this Court. Because it goes to the heart of the balance struck in *Doe* and *Roe,* involves substantial changes in the factual and legal conditions since 1973 that make *Doe* no longer just for prospective application, and seeks justice, the petition for writ of certiorari should be granted.

Respectfully submitted,

THE JUSTICE FOUNDATION
(Formerly Texas Justice Foundation, and still doing business in Texas as the Texas Justice Foundation)
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435 F.3d 1337

Sandra CANO, f.k.a. Mary Doe,
Plaintiff-Appellant,

Peter G. Bourne, et al.,
Plaintiffs,

v.

Thurbert E. BAKER, Attorney General of the State of Georgia, Paul L. Howard, Jr., District Attorney of Fulton County, Georgia, Richard Pennington, Chief of Police of the City of Atlanta,
Defendants-Appellees.

No. 05-11641
Non-Argument Calendar.

United States Court of Appeals
Eleventh Circuit.

Jan. 11, 2006.

Appeal from the United States District Court for the Northern District of Georgia.

Before ANDERSON, HULL and RONEY, Circuit Judges.

PER CURIAM:

Plaintiff Sandra Cano, then known as "Mary Doe," filed a class action lawsuit in 1970 against the Georgia Attorney General, and several other Georgia state and local officials attacking the constitutionality of, and seeking to enjoin the enforcement of, Georgia's Abortion Act, Ga.Code Ann. § 26-1201 *et seq.* (1969). On July 31, 1970, a three-judge panel in the district court issued an order holding that portions of the Act, which set forth certain procedures a women needed to follow in order to

obtain an abortion in Georgia, violated plaintiff's constitutional rights and granted her declaratory relief. *See Doe v. Bolton,* 319 F.Supp. 1048, 1056-57 (N.D.Ga.1970). Other than Cano, all other plaintiffs to the original action were dismissed.

On January 22, 1973, the Supreme Court issued its order in this case as a companion case to its seminal decision in *Roe v. Wade,* 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973), affirming the order of the three-judge district court with some modifications. *See Doe v. Bolton,* 410 U.S. 179, 201-02, 93 S.Ct. 739, 35 L.Ed.2d 201 (1973).

On August 25, 2003, approximately 32 years after first filing this suit, Cano filed a Federal Rule of Civil Procedure 60(b) motion for relief from, *inter alia,* the three-judge district court's 1970 judgment, where she had originally prevailed, and requested that a three-judge district court again be empaneled. The district court denied the Rule 60(b) motion. We affirm.

The Overall Propriety of the Rule 60(b) Motion

Initially, prior to discussing the merits of the district court's decision on appeal, we note that not one of the many cases cited by Cano involves a situation where a *prevailing* litigant subsequently asks a court "to relieve" her from a decision in which she was granted the relief she had originally requested. Nor have we found a case where a prevailing litigant is seeking permission to vacate a favorable decision for the plaintiff and only placed a burden on the defendant, not the plaintiff.

Rule 60(b), the equitable vehicle Cano has chosen here, states that "the court *may relieve a party* or a party's

legal representative from a final judgment, order, or proceeding for the following reasons. . . ." Fed.R.Civ.P. 60(b) (emphasis supplied); *see Toole v. Baxter Healthcare Corp.,* 235 F.3d 1307, 1316-17 (11th Cir.2000) (explaining the "sound discretion" the district court may exercise in reviewing Rule 60(b) motions). To "relieve" a party is "to ease of imposition, burden, wrong, or oppression, by a judicial or legislative interposition." Webster's Third New International Dictionary 1918 (1993). Rule 60(b) bestows the district court the discretion to utilize equitable powers to relieve a burden placed upon the defendant, in such a case, by injunction or declaratory judgment. *See, e.g., Cook v. The Birmingham News,* 618 F.2d 1149, 1153 (5th Cir.1980) (explaining that plain language of Rule 60(b)(5) is to prevent an "inequitable operation of a judgment"). The equitable purpose of Rule 60(b) cannot be to "relieve" a party from her own lawsuit in which she had prevailed three decades earlier. The equitable considerations presented by Cano here are counterbalanced by the long-standing legal maxim of "finality" of decisions. *See Waddell v. Hendry County Sheriff's Office,* 329 F.3d 1300, 1309 n. 11 (11th Cir.2003) ("It is for the public good that there be an end of litigation."); *Cook,* 618 F.2d at 1153 (discussing the court's need to balance equitable considerations against the need for finality of judgments). The need for finality of judgments here outweighs the circumstances Cano has identified in her Rule 60(b) motion, which were created in part by her thirty-year old lawsuit where she had prevailed. This, accompanied by the reasons explained below, leads to our conclusion that there was no abuse of discretion by the district court denying Cano Rule 60(b) relief.

In fact, even if the *defendants* had filed the Rule 60(b) motion, however, asking that they be relieved from the judgment for the reasons asserted by Cano, the district court's denial of relief would be due to be affirmed.

Cano asserted in her Rule 60(b) motion that the following were sufficient bases to reverse *Roe v. Wade, Doe v. Bolton*, as well as the district court's 1970 order: (1) new scientific knowledge about abortion, its effect on women, and the viability of a fetus existed; (2) the intervening Supreme Court *Agostini v. Felton,* 521 U.S. 203, 117 S.Ct. 1997, 138 L.Ed.2d 391 (1997) decision, which she contended changed the procedure for overturning a Supreme Court decision; and (3) the intervening developments in both case and statutory law. On February 5, 2004, Texas Black Americans for Life, Inc. and Life Education and Resource Network, Inc., moved to intervene as of right. The proposed intervenors argue that "abortion has been, is, and shall continue to be, an instrument of genocide" against black Americans and other minority groups. On March 26, 2004, the district court issued an order denying Cano's Rule 60(b) motion, including her requests for a three-judge panel and an evidentiary hearing.

We Have Jurisdiction to Review The Rule 60(b) Motion

Rather than seeking an immediate appeal of the denial of her Rule 60(b) motion, Cano first filed a Federal Rule of Civil Procedure 59(e) "Motion for Reconsideration and to Amend Order Denying Rule 60 Motion," on April 9, 2004. In that motion, Cano "respectfully request[ed] the Court under Rule 59(e) to reconsider and alter or amend the order on March 26, 2004 denying her Rule 60 motion." She argued that: (1) the district court denied her due

process rights by failing to grant her an evidentiary hearing and to make factual findings on the evidence she had submitted; (2) a three-judge court was required to hear her claim; (3) prospective application of *Roe* and *Doe* was unjust because of the substantial legal and substantive changes in the law since then; and (4) the district court subverted the purpose of Rule 60(b) by denying her motion "summarily." The district court denied the Rule 59(e) motion on February 23, 2005. Cano filed her notice of appeal to this Court on March 23, 2005, which seeks review of the district court's denials of both the Rule 60(b) and Rule 59(e) motions.

Appellees argue that we do not have jurisdiction because, *inter alia,* Cano failed to file a timely notice of appeal of the denial of her *Rule 60(b) motion.* We have jurisdiction because Cano's Rule 59(e) motion requesting that the district court reconsider the denial of her Rule 60(b) motion for relief was timely since it was filed within ten days of that denial, thus tolling the time to file the notice of appeal to this Court. *See Williams v. Bolger,* 633 F.2d 410, 413 (5th Cir.1980) (explaining that a timely filed Rule 59(e) motion requesting reconsideration of the denial of a Rule 60(b) motion tolls the time for appealing); *see also* Fed.R.Civ.P. 59(e) ("Any motion to alter or amend a judgment shall be filed no later than 10 days after entry of the judgment"). This circumstance is distinguishable from the cases cited by appellees where the same party filed *successive Rule 59 motions* more than ten days after final judgment. In those cases, the time to file a notice of appeal did not toll a *second time. See, e.g., Wansor v. George Hantscho Co., Inc.,* 570 F.2d 1202, 1206 (5th Cir.1978) (noting that a "motion to reconsider an order disposing of a motion of the kind enumerated in [Fed. R.App. P.] 4(a)

does not again terminate the running of the time for appeal"); *Ellis v. Richardson,* 471 F.2d 720, 721 (5th Cir.1973); *see also Finch v. City of Vernon,* 845 F.2d 256, 259 (11th Cir.1988).

No Reversible Error By Denying Request for Three-Judge District Court

The district court did not err by denying Cano's request for a three-judge district court. A single district court judge can decide threshold questions relating to Cano's Rule 60(b) motion even though the underlying judgment was tried by a three-judge court under the former 28 U.S.C. § 2281. *See, e.g., Bond v. White,* 508 F.2d 1397, 1400-01 (5th Cir.1975); *cf. McCorvey v. Hill,* 385 F.3d 846, 848 (5th Cir.2004) (same). Such matters include a single district court judge entertaining and deciding subsequent modified remedial orders, which is what the district court did here. *See McCorvey,* 385 F.3d at 848 (affirming district court's denial for three-judge district court panel in subsequent Rule 60(b) matter); *see, e.g., Kem Mfg. Corp. v. Wilder,* 817 F.2d 1517, 1521 (11th Cir.1987) (finding no abuse of discretion in district court's denial of evidentiary hearing in Rule 60(b) post-judgment action, where the district court did not grant relief as a matter of law in the first instance).

No Abuse of Discretion by Denying Relief Under Rule 60(b)(5) and (b)(6)

Even if this Court assumes, without deciding, that the Rule 60(b) motion filed here was filed within a "reasonable time" under Rules 60(b)(5) and (b)(6), the district court nonetheless did not abuse its discretion by denying Cano's

motion for relief from the district court's declaratory order issued more than 30 years ago. Fed.R.Civ.P. 60(b) (indicating that motions made pursuant to Rules 60(b)(5) and (6) "shall be made within a reasonable time"); *see, e.g., Johnson Waste Materials v. Marshall,* 611 F.2d 593, 601 (5th Cir.1980) (noting that Rule 60(b)(5) motion may be brought within a "reasonable time"); *see also Seven Elves, Inc. v. Eskenazi,* 635 F.2d 396, 402 (5th Cir. Unit A 1981) (listing factors for district court's consideration in Rule 60(b) motions).

Rule 60(b)(5) justifies relief if "the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application." Fed.R.Civ.P. 60(b)(5). Rule 60(b)(6), the catchall provision of the Rule, authorizes relief for "any other reason justifying relief from the operation of the judgment." Fed.R.Civ.P. 60(b)(6). Rule 60(b)(6) motions must demonstrate "that the circumstances are sufficiently extraordinary to warrant relief. Even then, whether to grant the requested relief is . . . a matter for the district court's sound discretion." *Toole v. Baxter Healthcare Corp.,* 235 F.3d 1307, 1317 (11th Cir.2000) (denying relief under Rule 60(b)(6) as well) (internal quotation and citation omitted). The appellant's burden on appeal is heavy. "[I]t is not enough that a grant of the [Rule 60(b) motion] might have been permissible or warranted; rather, the decision to deny the motion . . . must have been sufficiently unwarranted as to amount to an abuse of discretion." *Griffin v. Swim-Tech Corp.,* 722 F.2d 677, 680 (11th Cir.1984). Cano "must demonstrate a justification so compelling that the [district] court was required to vacate its order." *Cavaliere v. Allstate Ins. Co.,*

996 F.2d 1111, 1115 (11th Cir.1993) (quotation and citation omitted).

Cano claims that new scientific evidence has developed about abortion since the Supreme Court's *Roe* and *Doe* 1973 decisions, as well as the district court's 1970 decision, which was expressly modified by the Supreme Court. *See Doe,* 410 U.S. at 201-02, 93 S.Ct. 739. She further claims that there have been significant changes in the statutory and case law since those decisions. The passage of time will certainly develop additional evidence, whether scientific, factual, or otherwise, as well as modifications in the legal landscape. The question on appeal is, however, whether the district court abused its broad discretion in failing to grant equitable relief under Rules 60(b)(5) and (6). *See Toole,* 235 F.3d at 1316-17 (holding no abuse of discretion where district court denied relief where movant presented new scientific evidence gathered in four years since its original decision). Even assuming all the proffered scientific or clinical evidence about the effects of abortion submitted by Cano in support of her Rule 60(b) are true, it does not change the fact that the district court did not have the authority to reverse the Supreme Court's decisions in *Doe* or *Roe,* nor do we.

The district court did not err by holding that the Supreme Court granted no such authority in its *Agostini* decision, which left untouched the bedrock principle that "[i]f a precedent of [the Supreme Court] has direct application in a case . . . the Court of Appeals should follow the case which directly controls, leaving to [the Supreme Court] the prerogative of overruling its own decisions." *Agostini,* 521 U.S. at 237, 117 S.Ct. 1997 (quotations omitted). The Supreme Court has never overruled *Roe* or *Doe.*

No Abuse of Discretion By Denying Request for Evidentiary Hearing

The district court did not abuse its discretion by denying Cano's request for an evidentiary hearing and to make specific findings of fact on the evidence she had submitted in support of her Rule 60(b) motion. As the Fifth Circuit recently explained in *McCorvey*, which sought, *inter alia,* to reverse the *Roe* decision, "An evidentiary hearing would have served no useful purpose in aid of the court's analysis of the threshold questions presented, which, as we explained, precluded the relief [Roe] sought." *McCorvey,* 385 F.3d at 850. Because the district court's underlying decision was based on its lack of authority to grant the relief requested by Cano as a matter of law, there would have been no reason to hold an evidentiary hearing.

AFFIRMED.

United States Court of Appeals
For the Eleventh Circuit

No. 05-11641

District Court Docket No.
70-13676-CV-JOF-1

SANDRA CANO,
f.k.a. Mary Doe,

Plaintiff-Appellant,

PETER G. BOURNE, et al.,

Plaintiffs,

versus

THURBERT E. BAKER,
Attorney General of the State of Georgia,
PAUL L. HOWARD, JR.,
District Attorney of Fulton County, Georgia,
RICHARD PENNINGTON,
Chief of Police of the City of Atlanta,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia

JUDGMENT

It is hereby ordered, adjudged, and decreed that the attached opinion included herein by reference, is entered as the judgment of this Court.

Entered: January 11, 2006
For the Court: Thomas K. Kahn, Clerk
By: Harper, Toni

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION

Sandra Cano, formerly known as MARY DOE, Plaintiff, v. ARTHUR BOLTON, Attorney General of the State of Georgia, through his official successor in office, THURBERT E. BAKER; LEWIS R. SLATON, as District Attorney of Fulton County, Georgia, through his successor in office, PAUL L. HOWARD, JR., and HERBERT T. JENKINS, as Chief of Police of the City of Atlanta, through his official successor in office, RICHARD PENNINGTON, Defendants.	CIVIL ACTION NO. 1:70-CV-13676-JOF

ORDER

This matter is before the court on Plaintiff's motion for reconsideration [24], Proposed Intervenor's motion for reconsideration [25], and Proposed Intervenor's motion to set aside a finding of this court [26].

I. Statement of the Case

Plaintiff Sandra Cano, then known as Mary Doe, originally filed a class action lawsuit on April 16, 1970 against the Georgia Attorney General, Arthur K. Bolton,

as well as the Fulton County District Attorney and Chief of Police of the City of Atlanta, alleging the Georgia Abortion Statute, Code Section 26-1202, was unconstitutional. Judgment was entered in Plaintiff's favor on August 25, 1970, finding the statute to be void of overbreadth. On January 22, 1973, the United States Supreme Court affirmed the judgment of the district court in a companion case to *Roe v. Wade*, 410 U.S. 113 (1973). Plaintiff filed a motion for relief from judgment pursuant to Rule 60(b) of the Federal Rules of Civil Procedure on August 25, 2003. Plaintiff also requested a hearing by a three judge court, an evidentiary hearing, and oral argument on her claims. On February 5, 2004, Proposed Intervenors, Texas Black Americans for Life and the Life Education and Resource Network, Inc., filed a motion to intervene in the action. The Proposed Intervenors are a group opposed to the continued legalization of abortion and believe that "abortion has been, is, and shall continue to be, an instrument of genocide" against black Americans and other minority groups. The Proposed Intervenors also sought relief from judgment pursuant to Rule 60(b).

This court issued an order on March 26, 2004 denying Plaintiffs and Proposed Intervenor's motions. The court held that the statutes authorizing use of a three-judge panel did not require such an empaneling for the purposes of hearing a Rule 60(b) motion. The court further denied Plaintiff's motion for relief from judgment under either Rule 60(b)(5) or Rule 60(b)(6). The court held that the emergence of new scientific knowledge about abortion, its effects on women, and the viability of a fetus, was not a sufficient basis to overturn the precedent set in *Roe v. Wade* and *Doe v. Bolton*. The court further held that the changes in law put forth by Plaintiff in support of her

claim did not justify relief from judgment, as this court lacked the power to reconsider and overturn controlling Supreme Court precedent.

Addressing the Proposed Intervenor's claims, the court first noted that its attorney had not secured admission *pro hac vice* before this court and had not named designated local counsel. As such, the local rules of this court barred this court from entertaining the Proposed Intervenors' motions. Choosing to examine the motions on their merits, the court found that the Proposed Intervenors had not demonstrated a sufficient interest in the claim to justify intervention, nor had they shown an impaired ability to protect their interests absent intervention. The court believed that Proposed Intervenor's interest was in abortion generally and not specifically in the claims of Sandra Cano regarding the former Georgia statute. The court further found that Proposed Intervenors could pursue their race-based interest in abortion outside of this claim, either raising a facial challenge to abortion law or attacking it as applied to minorities.

Both Plaintiff and the Proposed Intervenors have now filed the instant motions for reconsideration, and the Intervenors seek to set aside a finding of this court. In her motion for reconsideration, Plaintiff contends (1) this court subverted the purpose of Rule 60(b) by denying its motion summarily; (2) her due process rights were violated by this court's denial of an evidentiary hearing and failure to make factual findings on the submitted evidence; (3) substantial legal and factual changes since the *Roe v. Wade* and *Doe v. Bolton* decisions made prospective application of those earlier cases unjust, which justify granting Plaintiffs motion; and (4) a three-judge court was required to hear Plaintiffs claim. Proposed Intervenor seeks reconsideration

of the order on the grounds that the court prematurely denied intervention and contends again that intervention is warranted on the merits of its claim. Proposed Intervenor also challenges a statement in the March 2004 order describing its position as inaccurate.

II. Discussion

A. Plaintiff

Plaintiff contends that this court ignored the import of *Agostini v. Felton*, 521 U.S. 203 (1997), when it determined that changes in fact and law could not provide the basis to grant Plaintiffs Rule 60(b) motion. In *Agostini*, the United States Supreme Court considered a Rule 60(b)(5) challenge to a permanent injunction and found it was an appropriate vehicle to challenge the continued propriety of an earlier order. *See id.* at 238-39. In an earlier case, *Aguilar v. Felton*, 473 U.S. 402 (1985), the Supreme Court had held that the First Amendment's Establishment Clause prevented the City of New York from sending its public school teachers into parochial schools in order to provide remedial education. *Id.* at 208. Upon remand, the district court entered a permanent injunction reflecting the *Aguilar* ruling. *Id.* Twelve years later, the parties, bound by that permanent injunction, sought Rule 60(b) relief from its operation. *Id.* The *Agostini* petitioners argued that relief was proper under Rule 60(b)(5) because of intervening changes in the law that made legal what the injunction sought to prevent. *Id.* at 214. The district court, however, refused to grant relief to Plaintiffs because *Aguilar* had not yet been overruled. *See id.* The Second Circuit Court of Appeals affirmed on the same basis. *Id.* The Supreme Court agreed that it was appropriate to seek Rule 60(b)(5) relief from an injunction or consent decree due to changes

in the law, and stated that "a court errs when it refuses to modify an injunction or consent decree in light of such changes." *Id.* at 215. The Supreme Court then went on to examine its Establishment Clause case law, ultimately determining that *Aguilar* was no longer good law and should be overruled. *Id.* at 235. The Court then determined that the change in law justified Rule 60(b)(5) relief. *Id.* at 237. Nevertheless, the *Agostini* opinion reemphasized the legal principle that lower courts should not overrule Supreme Court precedent with direct application.

> We reaffirm that "[i]f a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions. . . . The trial court acted within its discretion in entertaining the motion with supporting allegations, but it was also correct to recognize that the motion had to be denied unless and until this Court reinterpreted the binding precedent.

Id. at 237-38 (internal citation to *Rodrigez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 484 (1989), omitted). Moreover, the Supreme Court emphasized that the application of *Agostini* was limited to civil litigation "where the propriety of continuing prospective relief is at issue." *Id.* at 239.

Contrary to Plaintiff's criticism, then, this court did not err in relying upon *Rodrigez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477 (1989). Insofar as Plaintiff relies upon *Agostini* to urge this court to consider the impact of new law, the present case may be factually distinguished. *Agostini* quite clearly applies to either a

permanent injunction or consent decree, 521 U.S. at 215, while neither of those legal remedies is at issue in this matter. *See Doe v. Bolton*, 410 U.S. 179, 201 (1973), where the Supreme Court declined to reverse the district court's order of injunctive relief. Second, and most important, *Agostini* reaffirmed the holding of *Rodrigez*, even in the context of a Rule 60(b)(5) motion. The *Agostini* opinion specifically affirms the long-standing principle that only the Supreme Court may overrule its own precedent. In fact, the *Agostini* court noted that the trial court had acted properly in refusing to reinterpret directly binding precedent. Thus, this court did not err when it held that it was required to apply binding Supreme Court precedent directly applicable to this case: *Roe v. Wade*, 410 U.S. 113 (1973), and *Doe v. Bolton*, 410 U.S. 179 (1973).

Plaintiff also contends that this court should have either granted its motion for an evidentiary hearing or made specific factual findings on the evidence it submitted. A motion for reconsideration is an extraordinary remedy and should only be granted when there is discovery of new evidence, an intervening change in controlling law, or a need to correct clear error. *Deerskin TradingPost, Inc. v. United Parcel Serv.*, 972 F. Supp. 665, 674 (N.D. Ga. 1997) (Hull, J.). Plaintiff has not shown this court any new evidence or an intervening change in the law since this court's previous order. Moreover, there is no evidence that this court committed clear error in denying the evidentiary hearing. This court's opinion rested on a threshold legal issue. Given the holding that this court lacked the authority to reconsider Plaintiff's claim, whether on the basis of changes in science or the law, there was no useful purpose

to be served in conducting a hearing or in making specific findings of fact.[1]

Finally, the court finds no reason to reconsider its denial of Plaintiff's request for a three-judge panel. Plaintiff again has raised no allegations of newly discovered evidence or an intervening change in law. Plaintiff does not contend that this court committed clear error; instead, Plaintiff's argument essentially contends that this court could have interpreted the statutes governing a three-judge panel in another, "better" fashion. "A motion for reconsideration is not an opportunity for the moving party and their counsel to instruct the court on how the court 'could have done it better' the first time." *P.E.A.C.H. v. U. S. Army Corps of Engineers*, 916 F. Supp. 1557, 1560 (N.D. Ga. 1995) (O'Kelley, J.). Plaintiff's motion for reconsideration on this issue simply reiterates her own interpretation of 28 U.S.C. §§ 2281 and 2284 (1970). As the court does not believe its holding was clearly erroneous, the court will not reconsider its original ruling. *See McCorvey v. Hill*, 385 F.3d 846, 848 (5th Cir. 2004) (holding in Rule 60(b) litigation involving the companion decision, *Roe v. Wade*, that the Rule 60(b) motion "was not properly a matter for a three-judge court.").

For all these reasons, the court must deny Plaintiff's motion for reconsideration.

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[1] In its previous order, the court inadvertently denied Plaintiff's motions to submit copies in lieu of original affidavits and motion to exceed page limits. Accordingly, the court reconsiders its earlier denial and now GRANTS Plaintiff's motions to file copies in lieu of original affidavits and to exceed page limits [2, 3].

B. Proposed Intervenors

In their motion for reconsideration, Proposed Intervenors argue that this court erred in dismissing its motion to intervene before Defendants could file a motion for summary judgment. Proposed Intervenor also criticizes the court's reasoning in its motion to dismiss. The Proposed Intervenor argues this court erred in finding that its ability to protect its own interests would be impaired if it were not allowed to intervene, arguing that it cannot pursue its legal theories, based upon its contention that abortion is used as a tool of racial genocide so long as *Roe v. Wade* and *Doe v. Bolton* command the power of *stare decisis*. Given its interest in the vitality of these abortion rights cases, Proposed Intervenor argues that it has a direct, legally protectible interest in this case. These arguments, however, were all presented by Proposed Intervenor in its original motion to this court. The motion for reconsideration does not present new evidence, intervening changes in case law, nor does it show that this court made a clear error in its earlier opinion. Proposed Intervenor simply alleges that this court should have resolved the matter in its favor. Such an allegation, however, is not a proper basis for a motion to dismiss. The court finds Proposed Intervenor's timeliness argument similarly to lack merit. Proposed Intervenor appears to contend that its claim should not have been denied until this court had the opportunity to consider any motion for summary judgment Defendants might have proposed. The court finds no basis for this argument, especially as a motion for summary judgment would be an inappropriate response to a Rule 60(b) motion. For all these reasons, the court must deny Proposed Intervenor's motion to reconsider.

Proposed Intervenor has filed a separate motion asking this court to set aside a finding of fact. Proposed Intervenor objects to this statement in its March 26, 2004 order:

> Proposed Intervenors seek to intervene as of right in this case, alleging that neither Defendants nor Plaintiff is capable of representing its novel interest in this case: the belief that abortion was conceived as a tool for racial genocide.

Order, at 9. Proposed Intervenor contends this has never been its belief, and that it has never stated words to that effect. Proposed Intervenor concedes that it has made statements that abortion has been used as a tool of genocide against them. The quoted statement referenced by Proposed Intervenor was not a finding of fact, but rather a summary of the court's understanding of its position. Accordingly, there is no factual finding for this court to set aside. This challenged statement had no impact on the court's resolution of the issues before it. Accordingly, Proposed Intervenor's motion to set aside a finding of fact is denied.

III. Conclusion

Plaintiff's motion for reconsideration [24], Proposed Intervenor's motion for reconsideration [25], and Proposed Intervenor's motion to set aside a finding of this court [26] are DENIED.

IT IS SO ORDERED this 23rd day of February 2005.

/s/ J. Owen Forester
J. OWEN FORRESTER
SENIOR UNITED STATES
DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION

Sandra Cano, formerly known as MARY DOE, Plaintiff, v. ARTHUR BOLTON, Attorney General of the State of Georgia, through his official successor in office, THURBERT E. BAKER; LEWIS R. SLATON, as District Attorney of *Fulton County*, Georgia, through his successor in office, PAUL L. HOWARD, JR., and HERBERT T. JENKINS, as Chief of Police of the City of Atlanta, through his official successor in office, RICHARD PENNINGTON, Defendants.	CIVIL ACTION NO. 1:70-CV-13676-JOF

ORDER

(Filed Mar. 26, 2004)

This matter is before the court on Plaintiff's motion for relief from judgment, for a three-judge panel, and for an evidentiary hearing and oral argument [1-1, 1-2, 1-3, 1-4], for leave to file copies in lieu of originals [2-1], and for leave to file excess pages [3-1]. Also before the court is Proposed Intervenors' motion to intervene [14-1], motion for relief from judgment [15-1], and motion for judicial notice [16-1].

I. Statement of the Case

Plaintiff, Sandra Cano, then known as Mary Doe, filed a class action lawsuit on April 16, 1970 against Defendants, Arthur K. Bolton as Georgia Attorney General, Lewis R. Slaton as Fulton County District Attorney, and Herbert T. Jenkins as Chief of Police of the City of Atlanta, seeking a declaration that the Georgia Abortion Statute, Georgia Code Section 26-1202, was unconstitutional as a violation of the First, Fourth, Fifth, Ninth, and Fourteenth Amendments to the U.S. Constitution. On May 1, 1970, a three-judge panel was established to hear the matter. On July 31, 1970 the three-judge panel filed an order holding that portions of Georgia Code Section 26-1202 violated the constitutional rights of Plaintiff and granting her request for a declaratory judgment. Judgment was entered on August 25, 1970, finding that sections of the Georgia statute were void on their face for overbreadth. At that time, all plaintiffs other than Plaintiff Cana/Doe were dismissed.[1] Notice of appeal was filed on September 18, 1970. On January 22, 1973, the United States Supreme Court issued its order in this case as a companion case as to *Roe v. Wade*, 410 U.S. 113 (1973), affirming the order of the district court as modified. On August 25, 2003. Plaintiff Cano filed a motion for relief from judgment pursuant to Rule 60(b) of the Federal Rules of Civil Procedure as well as a request for a three-judge court, for an evidentiary hearing, and for oral argument. On February 5, 2004, Proposed Intervenors Texas Black Americans for Life, Inc., and Life Education and Resource Network, Inc., filed a motion to intervene as of right pursuant to Federal Rule of Civil Procedure 24(a).

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[1] Judgment was amended on October 13, 1970.

Plaintiff contends that a Rule 60(b) relief from judgment is warranted because both the factual and legal landscapes have changed since the Supreme Court decided *Roe* and *Doe* in 1973. Plaintiff contends that subsequent decisions modifying *Roe*, as well as conceptions of the liberty interest in life, have changed the legal context of the decision. Further, Plaintiff contends that recent medical advances, as well as knowledge about the negative effects abortion has on women, have similarly altered the factual backdrop to the abortion cases. On this basis, Plaintiff seeks relief from judgment. Plaintiff further argues that her case should again be heard before a three-judge panel, as it was in 1970, and that the panel should grant an evidentiary hearing and oral argument on the issues raised in Plaintiff's claim.

Proposed Intervenors are a group opposed to the continued legalization of abortion, believing that "abortion has been, is, and shall continue to be, an instrument of genocide" against black Americans in particular, but also against other minority groups. Proposed Intervenors contend that they seek to stop the harm imposed on racial minorities by abortion, and that because their interests are different from Plaintiff's, Plaintiff cannot adequately represent its interests before this court.

II. Discussion

A. Three-Judge Panel

Plaintiff requests a three-judge panel, pursuant to 28 U.S.C. § 2281, to hear her Rule 60(b) motion, evidentiary hearings, and oral argument. A three-judge panel originally heard this case in 1970 under this same statutory provision. The Act of August 12, 1976 repealed § 2281 for

prospective cases, but provided that the repeal "shall not apply to any action commenced on or before the date of enactment." *Id.*, § 7. Therefore, Plaintiffs claim is governed by the now-repealed section of the statute, which states in pertinent part:

> An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such statute or of an order made by an administrative board or commission acting under State statutes, shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of the statute unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title.

28 U.S.C. § 2281 (1970).

Section 2284 was also amended by the Act of August 12, 1976. However, as was the case with § 2281, the amendments made by the Act to § 2281 do not apply to cases commenced before the date of the Act's enactment. Therefore, this court will look to the statute as it existed before amendment to determine when a three-judge panel decision is required. Section 2284 provided:

> Any one of the three judges of the court may perform all functions, conduct all proceedings except the trial, and enter all orders required or permitted by the rules of civil procedure. A single judge shall not appoint a master or order a reference, or hear and determine any application for interlocutory injunction or motion to vacate the same, or dismiss the action, or enter a summary or final judgment.

28 U.S.C. § 2284(5) (1970).

In seeking relief under Rule 60(b), Plaintiff is manifestly seeking from this court an order "permitted by the rules of civil procedure." Further, the court finds that Plaintiff's requested relief does not pull this court into the second sentence of the statute, as Rule 60(b) relief does not consist in dismissal of the action or entry of judgment, but merely reopening a prior judgment. *See Fackleman v. Bell*, 564 F.2d 734, 736 (5th Cir. 1977) (finding that considerations of finality in judgments weigh against granting a 60(b) motion to reopen judgment). Finally, given the tremendous drain on resources necessitated by a three-judge panel, courts are to be cautious in granting requests for three-judge panels and narrowly interpret the statutes which authorize them. *Wilson v. Gooding*, 431 F.2d 855, 857 (5th Cir. 1970). Therefore, narrowly reading the terms of §§ 2281 and 2284, the court finds that a three-judge panel is not required for a Rule 60(b) motion. Accordingly, this court DENIES Plaintiff's request for a three-judge panel.

B. Rule 60(b)

Plaintiff seeks relief from the judgment of *Doe v. Bolton* pursuant to Rule 60(b)(5) or 60(b)(6). The rule states:

> [T]he court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: . . . (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any

> other reason justifying relief from the operation of the judgment.

Fed. R. Civ. P. 60(b). Plaintiff appends to her motion scientific and medical analyses which purport to show new scientific knowledge about "the humanity of the child." The court makes no judgment as to the importance or veracity of the information proffered by Plaintiff in support of her motion. The court finds, however, that the emergence of new scientific knowledge is not a sufficient basis to overturn long-standing precedent and legal certainty. In *Toole v. Baxter Healthcare Corp.*, the Court of Appeals for the Eleventh Circuit considered a breast implant case in which one party to the suit urged the court to grant relief pursuant to Rule 60(b) because of changed scientific evidence about such implants, discovered after the trial court's judgment. 235 F.3d 1307, 1316 (11th Cir. 2000). In *Toole*, the Eleventh Circuit quoted with approval language from *Merrell Dow Pharm., Inc v. Oxendine*, 649 A.2d 825, 831 (D.C. 1994), which states as follows:

> Although science is a constantly evolving process, the law depends upon a high level of certainty once an outcome has been determined. A trial can be no more than a resolution of an immediate dispute on the basis of present knowledge; its outcome must turn upon the teachings of science as understood at the time of trial as best can be discerned through the presentations of the parties. Where scientific facts are at issue, it is not unexpected, given the nature of the process, that the passage of time will bring forth further scientific data and inquiry relating to the ultimate scientific fact at issue. To reopen the trial's determination of scientific truth, however, runs squarely into the fundamental principle of certainty.

Id. The *Toole* moving party did not present any evidence other than its new scientific evidence to support its motion for relief from judgment. *Id.* at 1317. With nothing before it but this evidence of changed or developing scientific knowledge, the Eleventh Circuit held that the circumstances were not sufficiently extraordinary to justify relief pursuant to Rule 60(b)(6). Given that Plaintiff's instant motion also seeks relief from judgment based, at least in part, on evolving scientific knowledge, the court finds *Toole* persuasive. Therefore, the court finds that changes in the state of scientific knowledge between the final resolution of *Roe* and *Doe* by the Supreme Court in 1973 and the present day do not constitute a sufficiently extraordinary event to warrant relief from judgment.

The court recognizes that Plaintiff also contends relief from judgment is warranted by recent changes in the law. Plaintiff cites to cases subsequent to *Roe* and *Doe*, such as *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), and a euthanasia case, *Washington v. Glucksberg*, 521 U.S. 702 (1997), in support of her argument that the law has evolved in its attitude toward protecting life. Plaintiff also cites to cases involving federalism questions, beginning with *United States v. Lopez*, 514 U.S. 549 (1995), and cases involving the rights of illegitimate children, such as *Clark v. Jeter*, 486 U.S. 456 (1988), as examples of a changing legal situation which justifies reopening *Doe v. Bolton*. In asking this court to reopen its judgment in *Doe v. Bolton*, Plaintiff is asking this court to take steps that in practice would actually reopen the 1973 judgment of the Supreme Court. It is not the place of this district court, however, to take the extraordinary step of overruling a decision of the Supreme Court of the United States. Whenever Supreme

Court precedent has direct application to a case, even if that precedent rests upon reasons that have been rejected or discredited by other cases, lower courts must still apply the controlling Supreme Court precedent. *Rodrigez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 484 (1989). The Supreme Court alone has the prerogative to overrule its own decisions. *Id.* There can be no doubt that the Supreme Court decisions in *Doe* and its companion case, *Roe*, have direct application to the present motion pending in this case, as those decisions embody the final judgment in this case. Therefore, this court is bound to apply precedent and uphold the ruling in *Doe v. Bolton*, 410 U.S. 179 (1973). As this court finds that neither new scientific knowledge nor intervening changes in law are sufficient to warrant relief from judgment, the court must DENY Plaintiff's Rule 60(b) motion. The court also DENIES the related motions for oral argument and an evidentiary hearing.

C. Intervention

Proposed Intervenors seek to intervene as of right in this case, alleging that neither Defendants nor Plaintiff is capable of representing its novel interest in this case: the belief that abortion was conceived as a tool for racial genocide. As an initial matter, the record does not reveal that Proposed Intervenors, all incorporated groups, are represented by local counsel. The Local Rules of this court do not permit a non-resident attorney to appear in a case before this court before securing admission *pro hac vice*. L.R. 83.1B(1), N.D. Ga. Further, any attorney applying to appear *pro hac vice* must also name a designated local attorney who will serve as local counsel. L.R. 83.1B(2), N.D. Ga. Proposed Intervenors have complied with none of

these requirements. On this basis alone, the court would be justified in refusing to entertain Proposed Intervenors' motion to intervene.

The court finds that it need not reject Proposed Intervenors' motion on procedural grounds, however, for the motion to intervene as of right lacks merit. The United States Constitution limits the federal courts' power to adjudicate to claims and controversies. U.S. Const. Art. III, § 2. As a necessary corollary to this limitation, any plaintiff must have standing; that is, the plaintiff must have a personal stake in the outcome of the case. *Chiles v. Thornburgh*, 865 F.2d 1197, 1204 (11th Cir. 1989). Standing is a constitutional requirement, not a prudential limitation on exercise of Article III powers, and as such cannot be waived. *See id.* However, as Proposed Intervenors seek to intervene in an already extant case, the standing requirements have already been satisfied by the original parties to the claim. *Id.* at 1212. Therefore, Proposed Intervenors do not have to demonstrate that they meet the standing requirements, but questions of standing still remain relevant to their motion to intervene. *Id.* at 1213. Therefore, in order to intervene as of right under Rule 24(a)(2), Proposed Intervenors must show: (1) a timely application; (2) an interest relating to the property or transaction that is the subject of the action; (3) disposition of the action, as a practical matter, may impede or impair the ability to protect that interest; and (4) existing parties to the suit inadequately protect that interest. *Id.*

Proposed Intervenors' Rule 24(a)(2) motion is timely, being filed less than six months after Plaintiff's Rule 60(b) motion. However, Proposed Intervenors have not demonstrated a sufficient interest in the claim to justify their

intervention under Rule 24(a)(2). Intervention must be supported by a "direct, substantial, legally protectible interest" in the case. *Id.* at 1213-14. In *Chiles*, the proposed intervenors were detainees from the Mariel boat lift being held at the precise facility that was at the center of a suit over prison conditions. *Id.* at 1214. In these circumstances, the Court of Appeals for the Eleventh Circuit found that the proposed intervenors were interested in the particulate property, the prison, that was at the center of the lawsuit. By contrast, Proposed Intervenors' interest in this claim is far from direct, as they have not shown a specific, non-generalized interest in the subjects at issue, but rather assert that abortion is generally a tool directed at eliminating minorities by reducing their rates of reproduction. Further, the court finds that Proposed Intervenors do not meet the third criterion for intervention as of right: impaired ability to protect their interest if intervention is not allowed. In *Chiles*, the Eleventh Circuit found that the proposed intervenors might not be able to litigate questions about their particular prison conditions once the subject lawsuit was adjudicated. *Id.* Here, by contrast, Proposed Intervenors are not interested in the subject matter of this particular suit, but rather seek to use this suit as a vehicle to challenge abortion as a tool of racial discrimination and "genocide." Denying Proposed Intervenors' motion would not impede or impair their ability to protect their race-based interest in abortion, as they remain free to file a claim attacking abortion law on its face or as applied for targeting minorities for "genocide." As this court finds that Proposed Intervenors have failed to meet at least two of the requirements for intervention under Rule 24(a), this court DENIES Proposed Intervenors' motion to intervene. Consequently, the court

DENIES Proposed Intervenors' related motions for relief from judgment and for judicial notice.

III. Conclusion

The court DENIES Plaintiff's motion for relief from judgment, for a three-judge panel, and for an evidentiary hearing and oral argument [1-1, 1-2, 1-3, 1-4], for leave to file copies in lieu of originals [2-1], and for leave to file excess pages [3-1]. The court also DENIES Proposed Intervenors' motion to intervene [14-1], motion for relief from judgment [15-1], and motion for judicial notice [16-1].

IT IS SO ORDERED this 25th day of March 2004.

/s/ J. OWEN FORRESTER
J. OWEN FORRESTER
UNITED STATES
DISTRICT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 05-11641-HH

SANDRA CANO,
f.k.a. Mary Doe,

Plaintiff-Appellant,

versus

THURBERT E. BAKER,
Attorney General of the State of Georgia,
PAUL L. HOWARD, JR.,
District Attorney of Fulton County, Georgia,
RICHARD PENNINGTON,
Chief of Police of the City of Atlanta,

Defendants-Appellees.

On Appeal from the United States District Court
for the Northern District of Georgia

(Mar. 8, 2006)

Before: ANDERSON, HULL and RONEY, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35,

Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

/s/ Paul H. Roney
UNITED STATES
CIRCUIT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Sandra Cano, formerly known as MARY DOE,	§	
Plaintiff,	§	**CIVIL ACTION**
V.	§	**NO. 13676**
ARTHUR BOLTON, Attorney General of the State of Georgia Through His Official Successor in Office, THURBERT E. BAKER; LEWIS R. SLATON, as District Attorney of Fulton County, Georgia Through His Official Successor in Office, PAUL L. HOWARD, JR.; And HERBERT T. JENKINS, as Chief of Police of the City of Atlanta Through His Official Successor in Office, RICHARD PENNINGTON,	§	
Defendants.	§	

AFFIDAVIT OF SANDRA CANO

STATE OF GEORGIA	§	KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF FULTON	§	

BEFORE ME, the undersigned authority, on this day personally appeared SANDRA CANO, who after being duly sworn upon his [sic] oath deposed and said as follows:

"1. My name is Sandra Cano, and I reside in Georgia. I am competent to make this Affidavit. I have personal knowledge of the facts stated herein and the following is true and correct.

2. In 1973, I was the woman designated as 'Mary Doe', the Plaintiff in *Doe v. Bolton*, 410 U.S. 179 (1973), the companion case to *Roe v. Wade*, 410 U.S. 113 (1973). Although the courts understood that 'Mary Doe' was not my real name, what the courts did not know was that, contrary to the facts recited in my 1970 Affidavit, I neither wanted nor sought an abortion. I was nothing but a symbol in *Doe v. Bolton* with my experience and circumstances discounted and misrepresented. During oral arguments before the United States Supreme Court one of the Justices stated that it did not matter whether I was a real or fictitious person. This is where the Court was so very wrong. It did matter. I was a real person, and I did not want an abortion.

3. Abortion is just like *Doe v. Bolton*. It discounts the real experiences of the mothers. It misrepresents that abortion is for them. Just as Mary Does' true desires were hidden from the courts by those promoting abortion, so, too, have the real facts about abortion been hidden. Today, this Court will know the real truth about the real woman who was used to deceive, not only the courts, but the women of this nation about the reality of abortion.

4. 'Sandra Race Bensing' was my real name in 1970. I was twenty-two years old and pregnant with my fourth child when I first met the *Doe v. Bolton* attorney, Margie Pitts Hames. I had gone to legal aid to get a divorce and to find an attorney to help me regain custody of my two children. My

husband was not supporting us, and we had to live at the Salvation Army. At times we lived with my mother, but my stepfather did not want us there. I loved my children, but I could not care for them financially.

5. I was a trusting person and did not read the papers placed in front of me by my lawyer. I truly thought Margie Pitts Hames was having me sign divorce papers. I did not even suspect that the papers related to abortion until one afternoon when my mother and my lawyer told me that my suitcase was packed to go to a hospital, and that they had scheduled an abortion for the next day. They advised me that my doctor, Dr. Donald Block, was going to perform an abortion. I told both my mother and my lawyer that I would not have an abortion. Not then. Not ever. They persisted in their demands upon me.

6. When the demand for an abortion persisted, I fled to Oklahoma and stayed at the home of my ex-husband's grandmother. I remained in Oklahoma until my mother and lawyer assured me that they would cease their pressuring me to have an abortion. I was relieved that the ordeal was ended. Because they promised never to force me to have an abortion, I returned to Georgia.

7. My lawyer sent me a plane ticket so I could fly from Oklahoma to Georgia. She wanted me to be in a courtroom with other pregnant mothers. The night before I went to court, my mother and my lawyer expressed concern that I would leave again, and so they had me stay at the apartment of a legal-aid lawyer. Before the court appearance, I was told by my lawyer not to say anything in court. As a result, I never did say anything in court.

8. My predicament made it difficult for me to take care of my children, but I didn't need an abortion. I needed help, but all of the people around me – my husband, my mother and my lawyer – refused to help me with my children.

9. Instead of real help, my mother, stepfather and my lawyer persisted in their demands that I have an abortion. Those demands were made for themselves so they would not be burdened. It was, in my mind, a demand for what they thought was the easiest way for them to get out from under any obligation to help my new baby and me. But the abortion was not in my interest. I was the mother of a baby for whom I was responsible. I had a natural desire to have my baby and to raise her. I carried my child to full term and gave birth. Because no one would help me I felt compelled to surrender my rights and give my baby up for adoption.

10. One day in 1973, my mother and stepfather called me into their bedroom. Their television was on. They shouted to me excitedly, "Look! You won! You won!" Margie Pitts Hames was on television and the story reported that the United States Supreme Court had made abortion legal. At that time, I did not fully comprehend what my role was in the Court's decision in *Doe v. Bolton*.

11. Over the years, I gained a greater and greater sense that I was wrongfully used in *Doe v. Bolton*. A number of years ago, I decided that I wanted to see my file in the case so I could see what was said about me. I went to the courthouse to see my records which were under seal. An attorney, Wendell Bird, agreed to represent me and he asked that my records in my case be unsealed. I produced my driver's license, my

birth certificate, and my marriage certificate. The attorney who represented me in *Doe v. Bolton*, Margie Pitts Hames, tried to stop me from getting my own records, and I did not understand why.

12. It was only when I first saw the opened records in *Doe v. Bolton* that I understood why Margie didn't want me to see them. The records stated that I applied for an abortion, was turned down, and, as a result, sued the state of Georgia. According to the records, I had applied for an abortion through a panel of nine doctors and nurses at a state-funded hospital, Grady Memorial Hospital. That was a false statement. After reading the court records, I contacted the hospital and tried to obtain my records. At first I was told there were records, but when my new attorney sent his legal assistant to review the records, we were told that they did not exist. The hospital said they didn't have any records. I never sought an abortion there or anywhere else.

13. At times, I have been forced to reflect upon the events that led up to that day in 1973 when my mother and stepfather told me about the Supreme Court decision in *Doe v. Bolton*. In 1970, my life was a mess. I was having my fourth child, but no responsible husband or real place to live. I was uneducated. When I came back from Oklahoma, I was so relieved that no one was going to pressure me to have an abortion that I took part in a court proceeding without understanding what was really happening. I was used wrongly, but I didn't inquire enough. In retrospect, there were big signs which revealed what was happening.

14. Once a television man came to Margie's office and I was asked what I thought of abortion. I told him that, "I don't believe in abortion and I don't want an abortion." I also said I didn't care if anyone else had an abortion, that it wasn't my business. All I cared about, at that time, was that I didn't want an abortion. I was not thinking of the other women. I did not understand that I was involved in a case that sought to legalize abortion. I was naïve. In retrospect, perhaps, I could have discovered what was going on. But I was in a crisis. I depended on my mother's help. My lawyer became upset with me because I would never say to anyone that I would have an abortion. I should have, perhaps, understood what was happening, but I was simply attempting to survive. I remember Margie debating me. She claimed we were involved in a liberation right. She said women were entitled to equal pay for equal work, and I agreed. I never saw the pleading filed in court.

15. Many years later, when I saw the unsealed records in my case, I could not believe what the certification filed in my name said. I am certain the signature on the affidavit that said I wanted an abortion was not mine. I never saw that affidavit until the records were unsealed. If it was my signature, it was obtained without my knowing the contents of the affidavit. I had fled to Oklahoma to avoid an abortion. My lawyer knew I would never say I wanted one. The only reason I went to a lawyer was to get my children back. My predicament was used to argue that my new baby's life should be terminated.

16. I have often rethought how my involvement in *Doe v. Bolton* came about. Over the years it has haunted me. I never had an abortion, but I know

what it is like to feel responsible for one. I know what it is like to feel like a mother who helped terminate the life of her own child. After *Doe v. Bolton* was decided and I was told about my involvement, I felt responsible for the experiences to which the mothers and babies were being subjected. In a way, I felt that I was involved in the abortions – that I was somehow responsible for the lives of the children and the horrible experiences of their mothers. I have felt that experience that the death of a child is my fault; the helplessness the mother feels as events occur around her without any power to stop them; and the guilt that is associated with being told by the courts and society that the child's death was performed for the mother and only the mother.

17. This last assertion – that abortion is performed for the mother – is the cruelest misrepresentation of all. My own circumstance, the one used to justify legal abortion in the first place, is a perfect example of this reality. There are many doctors, and clinics and others who were plaintiffs in *Doe v. Bolton*. As Mary Doe, I was the only pregnant mother who was a plaintiff. All of these other people – the doctors, nurses and clinics were using the Court to do what they thought was in my interest. They pressured the Court claiming I need the right to terminate the life of my own child. It was their solution, not mine. They claimed they did it out of compassion for me. But it was a false compassion. A true compassion would result in the fathers living up to their responsibilities. A true compassion, once a mother is in the predicament that the child's father abandoned her, would advise her how to get help and would provide her help. Unfortunately, the legal right to an abortion was sought in my

case because others thought it was too hard for them to give me real help. The abortion was sought for them, not for me.

18. But no matter how hard life happens to be, no one has the right to kill a baby – especially the baby's mother. She is the trustee of her child's life. She, of all people, has the sacred duty to protect the child. But the child's interests are not at odds with her own. They are in concert with one another. The mother derives a great benefit from her relationship with her child. It is as beneficial to her as it is the child. It is never in the interest of a mother to terminate the life of her own child.

19. I have been forced to live with the consequence of this false compassion for too long for me not to bring to the attention of the Court the fact that abortion is not in a woman's interest, and the fact that legalization of abortion began with manipulations and misrepresentations. Too many women who lost their children through abortion have told me of their emptiness, their sadness, the void in their lives, and how others forced them to have abortions and then blamed the abortion on the mother.

20. The experience of *Doe v. Bolton* must be understood and accounted for, not simply to correct the record in my own case, but to correct the law of abortion in general: abortion is not in the interest of a mother. It is a false solution imposed upon a mother by others.

21. *Doe v. Bolton* and my circumstanced [sic] were misused. *Doe v. Bolton* was a fraud upon the court. *Doe v. Bolton* was a secret case about abortion, which is a secret procedure. This secretiveness

allows others to prevail upon the mother and others can act against her interest. Women have told me how they were forced to have an abortion against their will. If it was alleged that I spoke for other women in *Doe v. Bolton*, then I gladly speak for other women in this case to say that abortion is too coercive by nature; too much the will of others; too much the will of a society which finds abortion more convenient for it than a commitment to the well being of the mother and the child.

22. The real experiences of the women must be known and taken into consideration by the court. Abortion is too much what others would like a woman to do, rather than what is in her interest and what she really wants.

23. Others told the court that I wanted an abortion. The law has developed, in part, based upon what my lawyer claimed I wanted, and that abortion was in my interest. I feel I have the duty to tell this Court the truth about what I really thought then, and what I think now. As the Plaintiff in *Doe v. Bolton*, I have a very substantial interest in the litigation before this court in the matter of *Roe v. Wade* and I can provide the court a unique perspective of the *Doe v. Bolton* case not available from any other source.

24. In the 1970s the people closest to me successfully manipulated my circumstances to justify abortion and wanted me to have an abortion, but I refused. Today this Court has the opportunity to review, not just the real facts surrounding the *Roe v. Wade and Doe v. Bolton*, the original abortion decisions, but the opportunity to review the testimony of hundreds of women who have real,

true, experiences with abortion and not perpetuate the *Doe v. Bolton* fraud upon the Court.

Further Affiant sayeth not."

/s/ Sandra Cano
Sandra Cano a.k.a. Mary Doe of
Doe v. Bolton

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned authority, on this 12th day of Aug., 2003.

/s/ Justin [Illegible]
NOTARY PUBLIC IN AND
FOR THE STATE OF GEORGIA

My commission expires:
Notary Public, Fulton County, Georgia
My Commission Expiers Oct. 18, 2005

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Norma McCorvey, formerly known as JANE ROE	§	
Plaintiff,	§	
vs.	§	**CIVIL ACTION**
HENRY WADE, Through His Official Successor in Office, William "Bill" Hill, Dallas County District Attorney,	§	**NO. 3-3690-B and NO. 3-3691-C**
Defendant.	§	

AFFIDAVIT OF NORMA MCCORVEY

STATE OF TEXAS	§	
	§	KNOW ALL MEN BY
	§	THESE PRESENTS:
COUNTY OF DALLAS	§	

BEFORE ME, the undersigned authority, on this day personally appeared NORMA MCCORVEY, who after being duly sworn upon her oath deposed and said as follows:

1. My name is Norma McCorvey and I reside in Dallas, Texas. I am competent to make this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

2. Thirty-three years ago, I came before the United States District Court Northern District of Texas Dallas Division as the Plaintiff "Jane Roe", the young woman whose case legalized abortion in the United States, *Roe v. Wade*. At that time, I was an uninformed

young woman. Today I am a fifty-five-year old woman who knows the tragedy that arose from my unsuspecting acquiescence in allowing my life to be used to legalize abortion.

3. In 1970, I told this Court in the form of an affidavit that I desired to obtain an abortion never really understanding the ramifications. Today, I once again appear before this Court in the form of an affidavit to present evidence never presented in my earlier case, but today I come with a complete understanding of what my participation *Roe v. Wade* has brought to this country. My personal experience with this three-decade abortion-experiment has compelled me to come forward, not only for myself and the women I represented then, but for those women whom I now represent. It is my participation in this case that began the tragedy, and it is with great hope that I now seek to end the tragedy I began.

4. Because of my role in *Roe v. Wade* and my subsequent experience with abortion, this Court will be provided with information and a perspective unavailable from other source. Previously, the courts, without looking into my true circumstances or taking the time to decide the real impact abortion would have upon women, used me, my life, and my circumstances to justify abortion. Those judges who made the earlier decisions never had the advantage of the real facts to base their decision because the entire basis for *Roe v. Wade* was built upon false assumptions. Consequently, the decision was rendered in a vacuum totally devoid of findings of facts and solely based upon what abortion advocates wanted women. Because the courts allowed my case to proceed without my testimony, without ever explaining to me the reality of abortion, without being cross-examined on my erroneous perception of abortion, a tragic mistake

was made – a mistake that this Court has the opportunity to remedy.

5. The years following the *Roe v. Wade* decision have been very difficult, in a number of respects, but my life was never easy. Prior to my pregnancy with the "Roe" baby, I gave birth to two other children. My first, a daughter, was adopted by my mother. It was difficult to part with my child, yet I have always been comforted by the fact that my daughter is alive. My second daughter was raised by her father, a young intern at Baylor Methodist Medical School. He wanted to get married and make a home, but I wasn't ready for that kind of commitment. Later, when I became pregnant with the "Roe" baby, I was really in a predicament. My mother expressed her disapproval and told me how irresponsible I had been. She made it clear that she was not going to take care of another baby.

6. Although I knew I was pregnant, I waited for a while before I went to the doctor. While I was waiting to be examined, I questioned the some of ladies in the waiting room about whether they knew where a woman could go to have an abortion. A lady told me where an illegal clinic was located and told me that it would cost $250.00. Following our discussion, I told the doctor that I wanted to have an abortion, but he refused stating that abortion was illegal. He didn't believe in abortion and gave me the phone number of an adoption attorney.

7. When I had saved about two hundred dollars, I took a cross-town bus to the illegal clinic, which turned out to be a dentist's office that had been closed down the previous week. For some reason, I felt relieved yet angry at the same time. All my emotions were peaking; first, I was angry, then I was happy, and then I'd cry. From the abortion clinic, I took the bus

to my dad's apartment and decided to speak with the adoption attorney. The attorney set up the meeting and referred me to Sarah Weddington, the attorney who represented me in *Roe v. Wade*.

8. Following the adoption attorney's introduction, Weddington invited me out to dinner. Although Weddington and I were about the same age, our lives were quite different. She was a young attorney, and I was homeless and lived in a park. Unconcerned about politics, I sold flowers and an underground newspaper that described the types and availability of illegal narcotics. At the time, I simply sought to survive. During our initial meeting, I met with Sarah Weddington and her friend, Linda Coffee. Both Weddington and Coffee had recently finished law school, and they wanted to bring a class action suit against the State of Texas to legalize abortion.

9. During our meeting, they questioned me, "Norma, don't you think that abortion should be legal?" Unsure, I responded that I did not know. In fact, I did not know what the term "abortion" really meant. Back in 1970, no one discussed abortion. It was taboo, and so too was the subject of abortion. The only thing I knew about the word was in the context of war movies. I had heard the word "abort" when John Wayne was flying his plane and ordered the others to "Abort the mission." I knew "abort" meant that they were "going back". "Abortion", to me, meant "going back" to the condition of not being pregnant. I never looked the word up in the dictionary until after I had already signed the affidavit. I was very naive. For their part, my lawyers lied to me about the nature of abortion. Weddington convinced me, "It's just a piece of tissue. You just missed your period." I didn't know during the *Roe v. Wade* case that the life of a human being was terminated.

10. That evening, the two female lawyer and I discussed the case over a few pitchers of beer and pizza at a small restaurant in Dallas. Weddington, Coffee, and I were drinking beer and trying to come up with a pseudonym for me. I had heard that whenever women were having illegal abortions, they wouldn't carry any identification with them. An unidentifiable woman was often referred to as Jane Doe. So we were trying to come up with something that would rhyme with "Doe". After three or four pitchers of beer, we started with the letter "a" and eventually we reached "r" and agreed on "Roe". Then I asked, "What about Jane for the first name?" Janie used to be my imaginary friend as a child. I told them about her and how she always wanted to do good things for people, and it was decided – I became Jane Roe, by the stroke of a pen.

11. These young lawyers told me that they had spoken with two or three other women about being in the case, but they didn't fit their criteria. Although I did know what "criteria" meant, I asked them if I had what it took to be in their suit. They replied, "Yes. You're white. You're young, pregnant, and you want an abortion." At that time, I didn't know their full intent. Only that they wanted to make abortion legal, and they thought I'd be a good plaintiff. I came for the food, and they led me to believe that they could help me get an abortion.

12. After our meeting, I went to my father's apartment and began to drink alcohol heavily. I was depressed with my plight in life. I tried to drown my troubles in alcohol. Shortly thereafter I even attempted suicide by slitting my wrists. When my father questioned me about what was troubling me, I responded that I was pregnant again. When he asked me what I was going to do, I responded that I was thinking about having

an abortion. He inquired, "What is that?" I said, "I don't know. I haven't looked it up yet."

13. Later, Weddington and Coffee presented the affidavit for my signature at Coffee's office. I told them that I trusted them and that I did not need to read the affidavit before I signed it. I never read the affidavit before signing it and do not, to this very day, know what is written in the affidavit. Both Weddington and Coffee were aware that I did not read the affidavit before I signed it. At no time did they tell me that I had to read it before they accepted my signature. I told them that I trusted them. We called ourselves "the three musketeers." I know now that is one place where I went wrong. I should have sat down and I should have read the affidavit. I may not have understood everything in the affidavit and I would have probably signed it anyway. I trusted the lawyers.

14. My lawyers never discussed what an abortion is, other than to make the misrepresentation that "it's only tissue". I never understood that the child was already in existence. I never understood that the child was a complete separate human being. I was under the false impression that abortion somehow reversed the process and prevented the child from coming into existence. In the two to three years during the case no one, including my lawyers told me that an abortion is actually terminating the life of an actual human being. The courts never took any testimony about this, and I heard nothing which shed light on what abortion really was.

15. In 1972, Sarah Weddington argued in the courts, presumptuously on my behalf, that women should be allowed to obtain a legal abortion. The courts did not ask whether I knew what I was asking for. The abortion decision that destroyed every state law protecting the rights of women and their unborn babies was

based on a fundamental misrepresentation. I had never read the affidavit, and I did not know what an abortion was. Weddington and the other supporters of abortion used me and my circumstance to urge the courts to legalize abortion without any meaningful trial which addressed the humanity of the baby, and what abortion would do to women. At that time, I was a street person. I lived, worked, and panhandled out on the streets. My totally powerless circumstance made it easy for them to use me. My presence was a necessary evil. My real interests were not their concern.

16. As the class action plaintiff in the most controversial U.S. Supreme Court case of the twentieth century, I only met with the attorneys twice. Once over pizza and beer, when I was told that my baby was only "tissue" and another time at Coffee's office to sign the affidavit. I had no other personal contacts. I was never invited into court. I never testified. I was never present before any court on any level, and I was never at any hearing on my case. The entire case was an abstraction. The facts about abortion were never heard . Totally excluded from every aspect and every issue of the case, I found out about the decision from the newspaper just like the rest of the country.

17. In a way, my exclusion, and the exclusion of real meaningful findings of fact in *Roe v. Wade*, is symbolic of the way in which the women of the nation and their experiences with abortion have been ignored in a national debate by the abortion industry. The view that is presented is the view of what the abortion industry thinks is good for women. The reality of women's experiences is never presented.

18. I never had an abortion and gave the baby up for adoption. It was only later in life that I was confronted with the reality of abortion. Being unskilled

and uneducated, with alcohol and drug problems, finding and holding a job was always a problem for me. But with my notoriety from *Roe v. Wade,* abortion facilities, usually paying a dollar an hour more than minimum wage, were always willing to add "Jane Roe" to their ranks.

19. In 1992, I began working in abortion facilities where I was always in control. I could either make a woman stay or help her leave. My duties were similar to those of a LVN or an RN, such as taking patients' blood pressure and pulse and administering oxygen, although I never took any statistics or temperatures. Basically, I would stand inside the procedure room, hold the women's hands, and say things to distract them by saying, "What is the most exciting, or happiest period of your life?" Meanwhile, the abortionist was performing what is represented as a "painless" procedure and the women were digging their nails into me in an effort to endure the pain.

20. I worked in several abortion facilities over the years. In fact, I even worked at two facilities at the same time. They were all the same with respect to the condition of the facilities and the "counseling" the women receive. One clinic where I worked in 1995 was typical: Light fixtures and plaster falling from the ceiling; rat droppings over the sinks; backed up sinks; and blood splattered on the walls. But, the most distressing room in the facility was the "parts room". Aborted babies were stored here. There were dead babies and baby parts stacked like cordwood. Some of the babies made it into buckets and others did not, and because of its disgusting features, no one ever cleaned the room. The stench was horrible. Plastic bags full of baby parts that were swimming in blood were tied up, stored in the room and picked up once a week. At another clinic, the dead babies were kept in a big white freezer full of dozens of jars, all

full of baby parts, little tiny hands, feet, and faces visible through the jars, frozen in blood. The abortion clinic's personnel always referred to the dismembered babies as "tissue."

21. While all the facilities were much the same, the abortion doctors in the various clinics where I worked were very representative of abortionists in general. The abortionists I knew were usually of foreign descent with the perception that the lax abortion laws in the United States present a fertile money-making opportunity. One abortionist, in particular, would sometimes operate bare-chested, and sometimes shoeless with his shirt off, and earned a six-figure income. He did not have to worry about his bedside manner, learning to speak English, or building a clientele.

22. While the manners of the abortionists and the uncleanliness of the facilities greatly shocked me, the lack of counseling provided the women was also a tragedy. Early in my abortion career, it became evident that the "counselors" and the abortionists were there for only one reason – to sell abortions. The extent of the abortionists' counseling was, "Do you want an abortion? Ok, you sign here and we give you abortion." Then he would direct me, "You go get me another one." There was nothing more. There was never an explanation of the procedure. No one even explained to the mother that the child already existed and the life of a human was being terminated. No one ever explained that there were options to abortion, that financial help was available, or that the child was a unique and irreplaceable. No one ever explained that there were psychological and physical risks of harm to the mother. There was never time for the mother to reflect or to consult with anyone who could offer her help or an alternative. There was no informed consent. In my opinion, the only thing

the abortion doctors and clinics cared about was making money. No abortion clinic cared about the women involved. As far as I could tell, every woman had the name of Jane Roe.

23. Typically, most of the women would cry as soon as the suction machine was shut off, or, at some point. Sometimes, I thought that they realized what had been done to their babies. Once, I heard a woman call her mother and say, "I just killed my baby. I'm so glad you never killed me!"

24. The doctors always hid the truth from the mothers. I would say about eighty-percent of the women would try to look down during the abortion and try to see what was happening. This is the reason the doctors would start with the scalpel: to make sure there was just blood and torn up "tissue" for the women to see. Specifically, I remember one woman who came in for an abortion, a pretty, sweet young woman about eighteen years old, with a teddy bear. During the procedure she looked down and saw the baby's hand fall into the doctor's hand. She gasped and passed out. When she awoke and asked about what she saw, I lied to her and told her it didn't happen. But she insisted that she had seen part of her baby. A few weeks later, when she returned for her follow-up exam, she was a changed person: her sweetness had died and had been replaced with an indescribable hardness. I could not look her in the eye. It took quite a few beers that night to make that particular day go away.

25. In all of the clinics where I worked, the employees were forbidden to say anything that might talk the mother out of an abortion. While the abortionists' counseling was non-existent, my counseling technique gradually became different depending on my mood and the stage of my career. The experience of

abortion began to take its toll on me. In later years, I would sometimes take all the instruments that were used in an abortion procedure and purposely leave a little of the blood on some the instruments. Laying the instruments out on the little table in front of the woman, I would tell her, "This is the first instrument that is going to be inserted into your vaginal area." It would have just had a little smudge of blood, and I thought it was very dramatic. In retrospect, I don't even know why I was doing these things. It was as if I was trying to talk these women out of the abortion – something we were forbidden to do. In other counseling sessions, I would demonstrate the position and warn her that the instruments were sharp, and that if she moved the doctor might slip, and puncture her uterus, and she would bleed to death. In other situations, when a woman asked me how much it cost, I asked her in response how much she wanted to pay to kill her baby. She replied, "They told me it wasn't a baby." I responded, "What do you think it is inside you, a fish?" Other times, I would comfort them after the abortion by saying, "It wasn't a baby. It was only a missed period." Sometimes when I managed to make the women unsure, I would offer to refund their money except for the ultrasound.

26. After I saw all the deception going on in the abortion facilities, and after all the things that my supervisors told me to tell the women, I became very angry. I saw women being lied to, openly, and I was part of it. There's no telling how many children I helped kill while their mothers dug their nails into me and listened to my warning, "Whatever you do, don't move!" Because I was drunk or stoned much of the time, I was able to continue this work for a long time, probably much longer than most clinic workers. It is a high turnover job, because of the true nature ~~of the~~ business. The abortion business is an inherently dehumanizing

one. A person has to let her heart and soul die or go numb to stay in practice. The clinic workers suffer, the women suffer, and the babies die. I can assure this Court that the interest of these mothers is not a concern of abortion providers. I obviously advocated legalized abortion for many years following *Roe v. Wade*. But, working in the abortion clinics forced me to accept what abortion really is: It is a violent act which kills human beings and destroys the peace and the real interests of the mothers involved.

/s/ Norma McCorvey
Norma McCorvey a.k.a. Jane Roe of
Roe v. Wade

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned authority, on this day of 6-11-03, 2003.

/s/ Raymond J. Sexton
NOTARY PUBLIC IN AND
FOR THE STATE OF TEXAS

[SEAL]	RAYMOND J. SEXTON Notary Public STATE OF TEXAS Commission Expires: 10/27/03

AFFIDAVIT

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The State of CA

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Cheryl Allen

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Tell when and where your abortion occurred: Even while I was married I had the first in Los Angeles in 1970; the second in Long Beach – 1973

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How has your abortion affected you? Great sorrow and shock when I realized what I had done out of sheer ignorance. I *miss* deeply the child that I lost by spontaneous abortion and the 2 children whom I murdered. I love my living 3 children with all my heart and wish I knew the other 3 that I don't have. I have so much time for them all now.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? Do not murder to solve an "inconvenience" children – all children are a GIFT from the Lord. He will provide for them. Many childless couples are on waiting lists, longing to adopt a child. Your child is NEVER unwanted.

Based on your own experience, what would you tell a court that believes abortion should be legal? Human life which is sacred begins at conception and any act to end that life constitutes murder of the 1st Degree. All pregnant women should be protected from all harm due to two lives (at least) together, both most vulnerable.

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[000027]

AFFIDAVIT

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The State of District of Colombia (Washington, D.C.)

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Lisa Harrison
Anthony

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Tell when and where your abortion occurred: February 1973 in a clinic in Washington, D.C. and at Walter Deed Medical Center in Washington, D.C.

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How has your abortions affected you? It nearly destroyed me. I was so guilty. I never felt whole.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? Don't do it!!!!!!!!!!!!! If you must, give the baby away in adoption.

Based on your own experience, what would you tell a court that believes abortion should be legal? I would say that I would not want to be in their shoes on judgement day.

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[000037]

App. 58

AFFIDAVIT

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The State of Kentucky

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Lisa K. Arnold

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Tell approximately when and where your abortion occurred: 11-1-75 Toledo, Ohio

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How has your abortion affected you? It forever altered my life physically, emotionally, and spiritually. I was never able to have children. I suffered from depression, anger, lowered self-esteem, anxiety, fear & startle reactions. It took me 20 years to come back into a relationship with God because I was afraid he hated me for what I had done. Part of me died with my child that day.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? That she will never be the same. Women were created to nurture their children not kill them. No one kills with impurity and the ramifications are life long. If killing your child is considered a good decision, what would a bad decision be?

Based on your own experience, what would you tell a court that believes abortion should be legal? The same thing I just stated above based not only on my experience but the

hundreds of post-abortive women I have counseled over the past 8 years.

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[000048]

AFFIDAVIT

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The State of Colorado

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Susan L. Babcock

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Tell when and where your abortion occurred: March 1977 in Fort Worth, Texas. I do not know the name of the clinic.

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How has your abortion affected you? My abortion has affected me in numerous ways. I felt tremendous guilt and confusion in the recovery room. I felt I had done something terribly wrong but didn't understand why I felt that way. I was very depressed and withdrawn afterward and could not talk about what I was feeling. I was unable to discuss the abortion for many years, despite my husband trying to discuss it with me. I never revealed my abortion as part of my medical history. It affected my relationship with my husband for over 20 years. I worried about being punished for killing my baby and feared I would lose my children after they were born. I have had many medical problems that I attribute to having the abortion including pre-term pregnancies, abnormal paps, and abnormal periods.

* * *

Based on your own experiences, what would you tell a woman thinking of having an abortion? I would tell her to reconsider and to not have an abortion. I would tell her of the many long-term effects of the abortion. I would tell her of the physical, emotional and spiritual consequences of having an abortion. I have shared my personal experience many times with women considering an abortion and the pain associated with having the abortion, as well as the affects of those that have trusted me with their abortion experience. I would tell her that I think it is murder.

Based on your own experience, what would you tell a court that believes abortion should be legal? I would first say I believe it is murder to kill an unborn child. I would say that if woman knew what they later learned from their mistake, they would understand that it was murder. I would tell them of the hidden statistics of the many long-term effects women suffer in relation to having an abortion such as miscarriage, reproductive problems, and the mental aguish of taking a life. I would say to the courts that if a woman saw pictures of what a fetus was like developmentally, how brutal the abortion procedure is, how a baby suffers during the procedure, and the possible long term effects, they would never choose to end their babies life. I would tell the courts of the many women I have met who are still suffering because of their abortions and they don't know why. I would say I have not met anyone who has had an abortion who has not expressed regret in having it. I would tell the courts they should be protecting women from this harmful procedure and to not be influenced by the those profiting from [000058] abortions. I would tell them to listen to the experience of those

who have gone through an abortion and to not listen to those who have something to gain from performing them.

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[000059]

AFFIDAVIT

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The State of Arizona

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Catherine C. Barnella

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Tell approximately when and where your abortion occurred: August 1974 San Diego, CA

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How has your abortion affected you?

I have lived with regrets and feelings of guilt since 1974. Every day is thoughts of what I experienced. Depression is within reach, I have to fight it every day. When I think I have dealt with it all, I am frequently overwhelmed with emotions and have to start over.

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Based on your own experiences, what would you tell a woman considering an abortion? I would tell her, that abortion is Not a quick fix or a reasonable solution, it is something that she will have to live with the rest of her life. There are alternatives, choose Life!

Based on your own experience, what would you tell a court that believes abortion should be legal? I would tell the

court that abortion isn't about ending a pregnancy, its about killing a child and affecting women in ways they would never understand. 2 lives destroyed.

[000071]

AFFIDAVIT

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The State of Colorado

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Terri Baxter

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Tell when and where your abortion occurred: Summer 1974 in Atlanta, GA

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How has your abortion affected you? for years I lived with guilt & shame & fear not being able to talk about it. I have been through a divorce – I believe is directly linked to the abortions. I also believe the breast cancer is a direct link.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? Not to have it – there are to many other options and help available. Also, of all the women I've talked to – the ones who had an abortion sooner or later regretted it & the ones that carried to term never regretted it.

Based on your own experience, what would you tell a court that believes abortion should be legal? the physical, & emotional risks are to great to put a woman through.

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[000088]

AFFIDAVIT

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The State of Minnesota

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Karen A. Bellmore

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Tell when and where your abortion occurred: April 2, 1982 at Midwest Women's Health Center in Minneapolis, MN.

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How has your abortion affected you? Very negative. I was sad & depressed for years, and I'm still very saddened that I made such a terrible decision. The worst part is the guilt & anger within.

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Based on your own experiences, what would you tell a woman thinking of having an abortion? Don't do it! You will regret it the rest of your life. No matter what the reason, don't have an abortion because you would be killing your own child. I believe it is not a person's decision who lives & dies – only God's. You will regret it.

Based on your own experience, what would you tell a court that believes abortion should be legal? It's WRONG!

Murder should be illegal no matter what age, size or development of an individual life. If its illegal to kill a baby after birth, then it should be illegal before birth. It's still the same life. Humans should not have legal access to abortion. Look at your own child or someone else's & imagine killing them before they had a chance at life.

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[000102]

AFFIDAVIT

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The State of Ohio

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Suzanne M. Bishop

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Tell when and where your abortion occurred: Founders Womens Clinic Broadstreet Columbus, Ohio May 03, 1978

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How has your abortion affected you? I am 44 yrs old and childless, I desperately miss what could have been. I *know* in years past I drank, did drugs and many other self-abusive behaviors, to bury my grief and pain. I *know* this led to bulimia, which led to diabetes. My hysterectomy led to osteoporosis. Would you like to read what I have written over the years?

* * *

Based on your own experiences, what would you tell a woman considering abortion? DO NOT DO IT! There are alternatives. You cannot fathom the long term consequences

when the reality se[illegible] and you realize you are not just unpregnant you ARE the mother of a dead baby. That pain doesn't go away.

Based on your own experiences, what would you tell a court that believes abortion should be legal? Life begins at conception, God says thou shall not kill anyone including babies created in his image. By legalizing abortion every "Judge" carries the blood of the innocent on their hands. Every Judge is as responsible as I am for the outcome of my choice though their guilt is multiplied millions of times over.

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[000125]

AFFIDAVIT

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The State of Delaware

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WILMA BOEHMER

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Tell when and where your abortion occurred: 1970 in Baltimore, Maryland and 1975 in Baltimore, Maryland

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How has your abortion affected you? It is a pain that goes directly to the soul. It never lets go. You might think its gone but it is always there. Anything can trigger it. I had to have a hysterectomy at the age of 28. I had pre-cancer tumors on my ovaries, and I was bleeding all the time. I also had a severe case of endometriosis. Due to the abortion, I

have built a wall around me where even if people tell me that they love me, I cannot feel it. I know God loves me, but I can't feel it.

* * *

Based on your own experiences, what would you tell a woman thinking of having an abortion? I couldn't tell her strong enough not to do it. Hind sight is always 20/20. I would do whatever possible to prevent it from happening. I really feel that carrying all this pain (and I have not told anyone except my husband) has affected me mentally, emotionally, and physically all of my life and I am to the point where I am disabled.

Based on your own experience, what would you tell a court that believes abortion should be legal? It is definitely not OK with God. No matter what age or weeks the child is, it is murder and you feel like you have committed murder. I have gone over the ten commandments and have broken everyone of them.

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[000133]

AFFIDAVIT

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The State of Texas

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Tammy Boyd

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Tell approximately when and where your abortion occurred: 1984 Routh Street Women's Clinic

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How has your abortion affected you? For many years I feel like I just blocked it out or never came to terms with what had happened. One day on a web site I saw pictures or graphs showing a partial abortion and I just wept for so long. Even though I had not had this procedure I know at that moment I had lost something very precious. I gave my baby a name and prayed for forgiveness for my part in it all. The memories aren't what they use to be but I would love to go back and change the ending if it would not change the wonderful life I have now.

* * *

Based on your own experiences, what would you tell a woman thinking of having an abortion? There are only regrets that come along with it, if the people at the clinics cared for you they would tell you of all the risks both emotionally & physically. I would rather wonder about how a child is growing up than wondering what might have been.

Based on your own experience, what would you tell a court that believes abortion should be legal? Aside from being cruel & unusual, if we are a protector of life, liberty and pursuit of happiness, we should babies to live to pursue these things.

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[000143]

AFFIDAVIT

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The State of MS

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M. J. B.

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Tell when and where your abortion occurred: Memphis, TN

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How has your abortion affected you? negatively, depression, very severe, heavy bleeding every two weeks for years.

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Based on your own experiences, what would you tell a woman considering having an abortion? Don't do it

Based on your own experience, what would you tell a court that believes abortion should be legal? They are crazy, and don't realize it is morally wrong young teens can get an abortion with out parents knowing, abortion affects the whole family & society, if an unborn child's life is worth nothing why is anyone else's.

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[000155]

AFFIDAVIT

The State of Indiana

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Katrina L. Brummett

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Tell approximately when and where your abortion occurred: My first abortion was in 1976. The abortion was performed by an OBGYN in the Bloomington, IN hospital. The second abortion was in 1977 and was performed at a Planned Parenthood Clinic in Indianapolis, IN.

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How has your abortion affected you? Thankfully, to my knowledge, I have not had any physical consequences to my abortions. However, I suffered tremendously on an emotional and spiritual level for many years. I dealt with my abortion decisions by becoming emotionally numb, and eventually became incapable of attachment even in my relationships with my husband and my two daughters. I had violated my personal moral standards and therefore felt worthless, tainted, unworthy. I continued to make bad decisions that hurt not just myself, but my family, in an effort to escape the guilt and emptiness.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? Abortion is not an "easy" way to erase poor choices or to avoid unwanted consequences. The unfortunate truth of abortion is that we don't get to determine how this decision will effect us, or if in fact it effects us at all. When you are facing an "unwanted" pregnancy, *all* the options are difficult, the truth is **there is no "easy way out."** So please don't make a decision for

abortion believing that it's a quick, easy fix. There are *better* options that won't leave you regretting for a lifetime a decision that you cannot possibly take back. There is tremendous potential for serious physical, emotional and spiritual harm, consequences that can scar you for a lifetime. You do have other options and there are many people, churches and organizations that are willing to help and support you and your family in this decision.

[000179]

Based on your own experience, what would you tell a court that believes abortion should be legal? The information the courts used in order to create the law and uphold the law since its formation is based on lies and half-truths. The two women whose life situations these laws were based, now see the truth about the harmful effects of abortion and they themselves are fighting to reverse the law, that should speak louder than anything. There are numerous statements of "fact" that have been used to support abortion as a legal right. One of the points of persuasion for legalized abortion has been "women have the right to make their own choices regarding their health and future." I completely agree with this statement. But it is also my right within that context to be told the truth about abortion, all of the truth, and nothing but the truth. I should be able to confidently rely on the abortion provider to give me that truth, no matter how my ultimate decision effects the provider. Why, when a woman is given an ultrasound before her procedure, do they turn away the monitor so as to not allow the woman to view what in the context of a "wanted" pregnancy the women sees as her baby; this "blob of tissue" has hands, legs, eyes, a functioning brain and heart? Why are the potential physical and emotional risks minimized if talked of at all? You have no idea the

emotional pain and turmoil I experienced when I saw during my "wanted" pregnancy what that "blob of tissue" looked like at 6-8 weeks, when I terminated. **I have the right to know and to make an informed decision that I can live with for a lifetime, this is my most basic human right.** The law was supposedly created to protect women, their rights and health. Abortion in no way protected me physically, emotionally, or spiritually, in fact that one decision nearly destroyed my life. It is the court's obligation to hear all the facts, even those that are contrary to the "voices of power."

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[000180]

AFFIDAVIT

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The State of California

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Elizabeth Campbell

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Tell approximately when and where your abortion occurred: I have had multiple all through Planned Parenthood.

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How has your abortion affected you? I suffered from depression, migraine headaches – low self esteem – no self worth – was in an emotionally abusive relationship for 11 years until my divorce. I have a very difficult time trusting

people and have very few friends. Overweight = thin = abortions

Over protective parent to the point of smothering my children.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? Not to do it!! The ramifications of the "quick fix" will last with you a lifetime!! The guilt, grief, shame to deal with will be tougher to deal with than continuing w/a pregnancy & going through adoption.

Based on your own experience, what would you tell a court that believes abortion should be legal? This is a very devastating experience and one that the federal system should not continue to keep legalized – too much damage is happening to women with the "legalized procedure."

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[000196]

AFFIDAVIT

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The State of Georgia

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S.C.

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Tell when and where your abortion occurred: April 1994 – Atlanta, GA

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How has your abortion affected you? I was told of the medical ramifications that an abortion could cause – but not the emotional. Intense guilt & depression has plagued me since my abortion until I received "Post Abortion" counseling.

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Based on your own experiences, what would you tell a woman considering an abortion? I would tell her that even though she may not have planned on this child God did. I would pray with her & urge her to give her baby a chance at life – a chance that I denied my child.

Based on your own experience, what would you tell a court that believes abortion should be legal? I would tell them that life begins at conception and not birth. If I was only carrying a "clump of tissues", why was my heart ripped out after the procedure was performed? Every thread of my being deep down within my self was telling me I had just murdered my *child.*

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[000197]

AFFIDAVIT

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The State of TEXAS

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D.K.C.

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Tell when and where your abortion occurred: AUSTIN, TEXAS

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How has your abortion affected you? I HEARD BABIES CRYING AND HAD A REOCCURING DREAM FOR A LITTLE MORE THAN A YEAR. I WOULDN'T INTERACT WITH ANY MAN FOR QUITE A WHILE.

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Based on your own experiences, what would you tell a woman considering an abortion? GET HELP – OUTSIDE OF YOUR FAMILY – FOR YOURSELF AND YOUR FAMILY. SEEK CHRISTIAN GUIDANCE – MAKE SURE YOU HAVE ALL THE INFORMATION ON ALL OF YOUR OPTIONS!

Based on your own experience, what would you tell a court that believes abortion should be legal? THAT BABIES BLOOD IS AS MUCH ON THEIR HANDS AS IT IS MY OWN! I WOULDN'T HAVE CONSIDERED ANYTHING ILLEGAL.

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[000205]

AFFIDAVIT

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The State of Indiana

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P.C.

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Tell when and where your abortion occurred: (4 abortions) 1974, 1978, 1981, 1985, Planned Parenthood Pomona, Calif.

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How has your abortion affected you? Today I am married to my 2nd husband. A marriage brought together by God

(we lived 2000 miles apart when we met and courted) I believe due to my actions, it is the sole reason that today I cannot have children. On my 2 year anniversary I was in the hospital having a total hysterectomy.

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Based on your own experiences, what would you tell a woman considering an abortion? Listen to her inner self. Deep inside when I was pregnant I did want to have my baby I would tell her – OVERCOME FEAR of the unknown and replace her fear with faith GET support! GET TO KNOW GOD

Based on your own experience, what would you tell a court that believes abortion should be legal? I would ask WHY? WHAT DO THEY GAIN FROM LEGALIZING ABORTION MONEY??? I WOULD ASK THEM TO WATCH A VIDEO OF A FETUS experiencing abortion and then ask them to imagine that was their daughter or son or grandchild they just "illiminated" and it was their daughter on that table.

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[000204]

AFFIDAVIT

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The State of Mississippi

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Wendy Chesnut

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Tell approximately when and where your abortion occurred: 2/84, Santa Cruz, California

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How has your abortion affected you? I realized several years later what a huge mistake it was at the time I was very sad, but had noone to discuss it with, so I didn't face it at all. I remained very disconnected from the event in my life. Once I took responsibility for killing my baby – and actually began to think of the "pregnancy" as a baby I was able to move on. Now I have great compassion for women in an unplanned pregnancy & want to be sure they truly have all the facts in order to have a true choice.

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Based on your own experiences, what would you tell a woman considering an abortion? I would tell her factual information about her baby & its developement. I would tell her she most likely will regret an abortion decision either right away or in the future. I would give her all of her options.

Based on your own experience, what would you tell a court that believes abortion should be legal? I would tell them that regardless of what the law is – women do not receive full information in order to make a "choice." I would tell them that the $$ made in the abortion clinics is what the "choice" people are really after. I would tell them that statistics show & prove that abortion hurts women. I would tell them the pregnant in the first place not – murder as an after thought to hide the mistakes made.

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[000233]

AFFIDAVIT

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The State of California

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Amy M. Childers

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Tell approximately when and where your abortion occurred: Vallejo California, (1) Kaiser (2) Planned Parenthood.

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How has your abortion affected you? TORMENT – I could not forsee the horrible consequences in my life, my heart, my emotions, and my childs life. I feel like I assisted in murder of someone innocent and was never held responsible. I was treated as if this was a simple tooth extraction. As if I had no face nor did my unborn child. The guilt and depth of the loss I have experienced is unexpressable. I have reached some healing but I'm never able to totally recieve rest inside. My daughter asks "why don't I have any brothers or sisters and when will I?" These things stir up my pain. The loss is great and undeniable.

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Based on your own experiences, what would you tell a woman considering an abortion? The truth – maybe you can't see or imagine what will happen in an abortion – But you can literally feel your child torn into death from your heart. If you deny these feelings in the beginning this will be an emotional burden heavier than raising a child.

Based on your own experience, what would you tell a court that believes abortion should be legal? Murder is illegal so

why if a woman births a premature child at 24 weeks gestation – why do we fight to save the baby's life and call it a child if at the same time we can dismember a baby in the womb of the same gestation? Women are ill informed of the emotional consequences of abortion.

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[000234]

AFFIDAVIT

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The State of Colorado

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B.C.

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Tell approximately when and where your abortion occurred: Dec 10, 1980/Vail, Colorado

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How has your abortion affected you? Post trauma with depression, anger, guilt, despair, and infection. I would be lost as a murdurer without hope if the Lord had not forgiven & loved me I would have taken my own life. I will spend the rest of my life helping women understand the truth about abortion and support them in their unplanned pregnancy

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Based on your own experiences, what would you tell a woman considering an abortion? It isn't the easy fix they

say it is. God will make a way where there seems to be no way. I will help you in any way I can to have your baby, a special child for the world.

Based on your own experience, what would you tell a court that believes abortion should be legal? Please stop the murder of the future citizens of our country. Life is precious and death of my child is not reversable. Our future is our children.

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[000235]

AFFIDAVIT

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The State of Washington

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Elizabeth Cleigh

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[000241]

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I had an abortion in March 1982, at a Planned Parenthood abortion clinic in Hollywood, California.

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Immediately after the abortion I felt a sense of relief. But because I have had a lifetime of "stuffing" my emotions I had no awareness of the serious trauma that [000242] had just occurred. I had just committed murder. Even though my mind could not accept that my spirit and body knew exactly what had just happened, and they did every thing they could to get ~~through~~ me to see the truth. God places a

conscience in each one of us whether we choose to submit to it or not. And I had chosen not to see the truth.

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I would tell a woman seeking abortion to not even go near a Planned Parenthood Clinic. They DO NOT GIVE YOU A CHOICE!!! To seek help at a Crisis Pregnancy Center where they can truly give you a wide range of choices and options and support along every step of the way. You may not experience any affects from the abortion right away but the pain is still there whether you want to confront it or not and your day will come like mind did whether its here on earth or when you have taken your last breath and face your Heavenly Father to give an accounting of your life. **You will eventually one way or another face the truth about your abortion!**

I have pondered greatly over this question. I believe abortion should not be considered a RIGHT. It is what it is, murder. I believe abortion cannot be abolished unless it is fully recognized as murder on all levels of society and if CHOICE in the fullest extent of the word is established in medical clinics; and pregnancy and LIFE support is offered rather than bondage and death. Pregnant teens and women aren't given a choice when they enter a Planned Parenthood Clinic. Their only option is abortion! One does not have to look far to see what the original intention of Planned Parenthood was and still is, it has never been to empower women but to demean them, especially women of color. The original [000243] intention was to legalize genocide, to eliminate blacks and other minorities from our culture! But now that our culture is brainwashed to think abortion is a Right of all women, it

will never be outlawed. If the Black women of America knew the truth they would be outraged.

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[000244]

AFFIDAVIT

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The State of Texas

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Terrie Coleman

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Tell approximately when and where your abortion occurred: October 1978, Fort Worth, TX @ a Planned Parenthood Clinic

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How has your abortion affected you? My abortion so traumatized me that it was 10 years before I could even talk about it. Now – 23 years later – I cannot even think about what an awful thing I did to my own baby without crying. I have been severely depressed at times & often overwhelmed with guilt and fear. It has always been a struggle for me to not think that God would "take" my other children as punishment for what I had done to that first baby.

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Based on your own experiences, what would you tell a woman considering an abortion? Planned Parenthood does *not* tell you exactly what you are doing to an unborn baby. They NEVER suggest to you the possible emotional scars

this leaves. I can tell you from experience, this is *not* a painless way out of a "bad" situation.

Based on your own experience, what would you tell a court that believes abortion should be legal? Killing an innocent unborn baby to hide the deeds of his/her parents should ***never*** be a choice, an option. To allow people to profit by the murder of innocent, unborn children for the sake of "convenience" is shameful and should be outlawed.

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[000247]

AFFIDAVIT

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The State of Alabama

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RAC

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Tell when and where your abortion occurred: San Antonio, TX 1984.

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How has your abortion affected you? Severe depression, crying I don't want to be around babies because I am ashamed of what I did.

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Based on your own experiences, what would you tell a woman considering an abortion? I would tell her the hell I have been through and that they people who represent the clinics either lie or withold the truth to complete the abortion & they don't care about her or the baby.

Based on your own experience, what would you tell a court that believes abortion should be legal? They are wrong life begins upon conception and it it wrong to change the definition of conception to suit their own agenda. They are the first in the chain of killers

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[000261]

AFFIDAVIT

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The State of Kentucky

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Nicole W. Cooley

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Tell when and where your abortion occurred: April 15/16, 1994 in Washington DC. I believe the name of the clinic was "Washington Surgi-Center" – it has since closed.

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How has your abortion affected you? Gyn/ob exams are extremely stressful – painful as well for years. Marital intimacy difficult. Difficulty in childbirth. Frequent insomnia. Abortion compounded the pain of my rape making healing much more difficult.

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Based on your own experiences, what would you tell a woman thinking of having an abortion? Abortion is so devastating that I would never do it again – even at the cost of my own life. The abortion procedure is inhumane – pets

are treated far better. This is a decision you will live with the rest of your life – make a choice you won't regret.

Based on your own experience, what would you tell a court that believes abortion should be legal? Abortion doesn't "protect" women – it destroys them by allowing them to go against their inherent nature (to protect children). By keeping abortion legal, women are duped into believing it is safe, morally permissable and inevitable. Abortion is none of these – it is emotionally/physically destructive, immoral, and in the long run, the harder "choice."

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[000271]

AFFIDAVIT

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The State of MS

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L M C

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Tell when and where your abortion occurred: Memphis, TN

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How has your abortion affected you? I experienced depression, crying for unknown reasons, suicidal thoughts.

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Based on your own experiences, what would you tell a woman considering an abortion? It may seem right at the time or the only thing you can do, or it is okay or you're right but the emotional pain you will feel later will be unbearable.

Based on your own experience, what would you tell a court that believes abortion should be legal? That women deserve to know the truth! That abortion kills babies, that it hurts women physically & emotionally! That it does not end when you leave the clinic. There is such a thing as Post Abortion Syndrome and I had it. I wonder how many women have tried to commit suicide over their abortion. I wonder how many have succeeded! Most of all I wonder if you even care!

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[000296]

AFFIDAVIT

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The State of ARKANSAS

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M A C

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Tell approximately when and where your abortion occurred: in 1983 Beaumont, Texas Womens Care Clinic

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How has your abortion affected you? Emotionally – Physically. I was 25 when I had my abortion. I'm 42 now and there is not a day goes by I don't think about how I murdered my baby.

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Based on your own experiences, what would you tell a woman thinking about an abortion? If you ever want to have more than one child, if you want to save your sanity, there is

a lot of pain and blood, unbelievable pain, depression, grief! Lots of grief.

Based on your own experience, what would you tell a court that believes abortion should be legal? Go have one! if you want a nation of emotionally, physically, disturbed women go ahead. I'm pleading with you please stop this butchering of women and their baby's. Because of this procedure, I cannot have anymore children. I thank god I have one son.

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M A C

[000315]

AFFIDAVIT

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The State of Texas

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Terry Daly

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Tell when and where your abortion occurred: Lakewood, Colorado May, 1980

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How has your abortion affected you? I wanted to replace the baby (get pregnant again) right after my abortion. I have gone through several deep depressions. It caused problems in my marriage and my relationship with my mother.

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Based on your own experiences, what would you tell a woman considering an abortion? Think of yourself holding a precious innocent newborn baby. Someone snatched it from

you and murdered it in front of you. You would be mortified. That is how you are going to feel after your abortion. Only you are the murderer. The sickening guilt is unbelievable!

Based on your own experience, what would you tell a court that believes abortion should be legal? Now that we have the technology to see inside the womb, and we know beyond a doubt that we are indeed stopping a beating heart, how can we continue to allow this avenue of murder to be legal.

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[000328]

AFFIDAVIT

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The State of New Mexico

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Tell approximately when and where your abortion occurred: 1976 Santa Fe, NM

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How has your abortion affected you? Once I was married, I became pregnant and had overwhelming guilt. I was sure I'd loose my baby as a punishment for aborting my first baby. Even now I am ashamed and angry that I was not fully informed. I don't believe my parents were fully informed either. I often wonder if it was a boy or girl.

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Based on your own experiences, what would you tell a woman considering an abortion? To research what she's doing. It is a dangerous surgical procedure for her that can lead to an increased risk in breast cancer. She needs to look at ultrasounds of developing babies. They are humans; with human baby attributes. At some point you will feel guilty of murder

Based on your own experience, what would you tell a court that believes abortion should be legal? That it's murder. It's the destruction of a human life. In ancient Roman history the unwanted babies in jars to die & leave them outside. It's a horrid time in our history. How are we any different? We leave our unwanted babies in buckets & dumpsters. It's still infantacide. I'm a nurse and I have to have informed consent for procedures. I know young girls are not giving informed consent.

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[000346]

AFFIDAVIT

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The State of North Carolina

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Cheryl A. Derstine

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Tell approximately when and where your abortion occurred: 1981 I was 16 yrs. old. The abortion occurred at a women's clinic in Allentown Pennsylvania.

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How has your abortion affected you? I became physically ill shortly after my abortion with severe back and abdominal pain, high fever and seizures. Emotionally and spiritually it destroyed my life and took 21 years for me to be emotionally and spiritually healed.

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Based on your own experiences, what would you tell a woman considering an abortion? Please don't have an abortion. Abortion is the exact opposite of what women were and are created to do. Motherhood is not a curse but living in unforgiveness and pain from aborting you own baby is.

Based on your own experience, what would you tell a court that believes abortion should be legal? Abortion is murder. Somehow along the way we've been told at conception and the early weeks its not really life – not really a baby – that simply not true. At conception THERE IS LIFE. PRO CHOICE IS PRO DEATH. Murder is not accepted in a court room – murder is an act of a criminal , so . . . abortion needs to be outlawed.

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[000367]

AFFIDAVIT

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The State of Texas

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Shawn Doctor

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Tell when and where your abortion occurred: At New Women's Clinic (San Pedro Rd) in San Antonio –I believe it was Wednesday the first week in July 1988.

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How has your abortion affected you? depression, loss of self-esteem (which eventually led to an eating disorder), before redemption in Christ – constant (almost daily) thought about the tragic manner in which my baby was killed, and extreme guilt.

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Based on your own experiences, what would you tell a woman thinking of having an abortion? Don't do it. It will be the worst mistake in your life. As difficult and painful as your situation may be nothing compares to the agony of killing you child. Don't ignore the subtle voice from within that tells you it's wrong. That is the voice of God pleading with you to keep your child alive.

Based on your own experience, what would you tell a court that believes abortion should be legal? This so-called choice should never even be an option. The law tells us that we MUST wear seat belts, yet we can murder our babies within our very womb? Something is tragically wrong with our society. If abortion was illegal in 1988, there would be another happy twelve year old living today!

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[000373]

AFFIDAVIT

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The State of New Jersey

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Teresa Dziadal

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Tell approximately when and where your abortion occurred: Hackensack Medical Cntr August 4, 1988

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How has your abortion affected you? It replays in my mind 24 hrs a day. Seeing children, pregnant women hurts. I've lost my best friend because of my child. I don't trust doctors (being a diabetic that's rough) I don't trust hospitals. I cry every day. I have no forgiveness for myself – I feel that I should have been able to stop them – since telling them to stop didn't matter

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Based on your own experiences, what would you tell a woman considering an abortion? That it's a child that's being terminated, not a pregnancy. That there are alternatives to having an abortion and that a man's rights should never outweigh a woman's rights. Proabortionists usually have never had to suffer one themselves.

Based on your own experience, what would you tell a court that believes abortion should be legal? I was always a firm believer in a woman's rights – until I found out the hard way that pro choice only means proabortion. It should be

proabortion and anti-abortion; not prochoice vs. pro life. No one cared about my choice, no one cared by my rights.

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[000393]

AFFIDAVIT

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The State of Texas

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Dawn M. Erickson

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Tell approximately when and where your abortion occurred: Spring 1974, El Paso, TX Piedres St.

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How has your abortion affected you? For 26 years I never talked about my abortion even when abortion was brought up in conversation. For most of my adult life and late teens I abused alcohol, and for 10 years I was addicted to drugs, and I believe I took these actions to try and kill the pain of my secret murder of my child by abortion. My choices in my social life were not very picky because I tried to fill my pain with what I thought was love and it turned out to be lust, and the men left or I left due to physical abuse. At the age of 23 I gave a son up for adoption because I was so messed up. I couldn't raise him, and at 33 I kept my son. None of these events could replace the pain of the loss of my child.

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Based on your own experiences, what would you tell a woman considering an abortion? Abortion is murder. It is something you cannot ever undo. This could be your only child. If they were parents and they have children, and if they had to chose which child they would kill, what niece or nephew would they kill? It's a baby.

Based on your own experience, what would you tell a court that believes abortion should be legal? God creates life in the womb, and abortion is an act against God. Educate by telling details of some techniques of abortion. Abortion is not just a physical operation with risks . . . even death, but it can affect a woman emotionally and psychologically for years and even for life.

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[000410]

AFFIDAVIT

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The State of Arkansas

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Jerrell Ann Farmer

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Tell approximately when and where your abortion occurred: Los Angeles California

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How has your abortion affected you? I am 47 years old. I have only been pregnant once since my abortion and I had a miscarriage. How sad – I would have been a great mom. I often think of how old my child would be. I believe my baby

was a boy. I wonder what he would have become. I think of how close we could have been. It is a profound loss.

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Based on your own experiences, what would you tell a woman considering an abortion? There are other options. Better options. Ones that leave you healthy physically and emotionally. Options that do not leave you searching for a means of redemption.

Based on your own experience, what would you tell a court that believes abortion should be legal? Killing is a crime and we need to get our heads out of the sand. A fetus is an unborn child at any stage. To believe different is to believe a lie. All human life is created in his image. No court has the authority to say different and not suffer the consequences as a Nation.

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[000419]

AFFIDAVIT

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The State of California

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K.G.

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Tell approximately when and where your abortion occurred: April 25, 1994/Dr Ryan Anderson's office in Danville, CA

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How has your abortion affected you? It was almost nine years ago and there is not a day that goes by that I don't

think about it. About a month after, I started having severe panic attacks because I felt like something bad would happen to me because I did something so horrible. With the birth of each of my three children, I suffer from extreme guilt and sadness about the baby that I didn't give a chance at life.

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Based on your own experiences, what would you tell a woman considering an abortion? I would tell them that life begins at conception. If they are young like I was there are options like adoption or people that will help you take care of the baby. mostly I would stress that it was a BABY not a blob, or cells, or product of conception like I was told.

Based on your own experience, what would you tell a court that believes abortion should be legal? Something that involves taking the life of a child to be legal is absolutely crazy. God gives us our children, it is not up to us which ones stay and which ones go. It is up to him. How sad it is for all of the babies that God wanted to give life to and they were destroyed. Secondly, the mothers can suffer for the rest of their life.

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[000474]

AFFIDAVIT

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The State of Texas

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Janice L. Gilliland

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Tell approximately when and where your abortion occurred: Salinas, CA –Planned Parenthood 1986 Spring or Summer

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How has your abortion affected you? I feel this abortion affected me physically, mentally and emotionally. I was already the mother of 3 children and believed in life and loved being pregnant. Because of the fear I lived under perpetrated by my ex-husband, I chose to have the abortion to avoid anymore of his wrath and terror. This abortion has affected me emotionally to this day, as I am still dealing with the loss. My health also deteriorated afterwards.

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Based on your own experiences, what would you tell a woman considering an abortion? Never, never take the life of your child, because you'll always wonder what is it's potential would have been and you'll always live with the guilt and sadness of it. At least with the option of adoption, you chose life for your child and opportunity.

Based on your own experience, what would you tell a court that believes abortion should be legal? That, even at 8 weeks when I had my abortion, I new there was life in me. That making murder legal still does not make it right. Abortion is a legal convenience that is not worth the consequences; physically, emotionally, or mentally.

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[000487]

AFFIDAVIT

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The State of MN

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Beverly A. Green

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Tell approximately when and where your abortion occurred: Feb. 1979 Meadowbrook, St. Louis Park

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How has your abortion affected you? I went into a black tunnel for years. Started using drugs, drinking, more promiscuity, very insecure, hated myself – the list goes on. . . .

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Based on your own experiences, what would you tell a woman considering an abortion? It's not a quick and easy solution. Don't do it! It will haunt you the rest of your life. Two wrongs won't make a right. They don't tell you how awful it is and that you will forever morn the loss of your baby.

Based on your own experience, what would you tell a court that believes abortion should be legal? It's not the "illegal" abortions that hurt women – it's abortion. Our constitution should protect the rights of all people – born, old and unborn. Harry Blackman himself stated that they would have a hard time getting the law for abortion if it were proven that the fetus is actually a baby – well in this day and age – that's a "no brainer!"

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[000508]

AFFIDAVIT

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The State of NC

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Gwen E. Gregory

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Tell approximately when and where your abortion occurred: 1978 or 1979 – Ft. Myers, FL

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How has your abortion affected you? Years of guilt, mental and emotional distress. Fears if I could have a normal child. Especially during my 2 subsequent pregnancies, keeping it silent from family and friends, shame

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Based on your own experiences, what would you tell a woman considering an abortion? Not to do it. Look for alternatives. Raise yourself, adoption assistance

Based on your own experience, what would you tell a court that believes abortion should be legal? It is taking a life. It can affect you the rest of your life. There are alternatives.It is too easy a choice, uninformed, under pressure it is very painful process.

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[000514]

AFFIDAVIT

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The State of Florida

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R.G.

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Tell approximately when and where your abortion occurred: Delaware County, PA 1987 and 1989

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How has your abortion affected you? For years afterward I suffered from unexplained guilt and shame. I could not except what I had done and wished I could have the opportunity to change my decision. I would cry over the loss. And it is so difficult to heal because even though "Choice" is excepted, to have had an abortion is tabu. How can that be? Thankfully I finally found peace thru God's love & foregiveness.

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Based on your own experiences, what would you tell a woman considering an abortion? Even though it seems like an easy out, the pain will be with you for the rest of your life.

Based on your own experience, what would you tell a court that believes abortion should be legal? It is murder pain and simple. Without the fetus there would not be a human life. No one should be allowed to murder anyone, especially out of convenience of choice. Life is valuable.

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[000521]

AFFIDAVIT

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The State of Tennessee

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M H

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Tell approximately when and where your abortion occurred: 1989 – Planned Parenthood Nashville, TN 1990 – Dr. Jill Chambers Nashville, TN

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How has your abortion affected you? I had 10 years of depression, anxiety, and panic attacks that I had trouble understanding. I did not understand what was causing me to be literally ill. I eventually learned of Post-Abortion Syndrome. I was apprehensive at first but agreed to see a councelor. Through this process I discovered that I was so full of guilt, shame, regret, unforgiveness, and sadness that I will unable to cope with day to day life. Those 10 years of my life were spent in anguish due to a decision that I had made based upon mis information and untruths.

Based on your own experiences, what would you tell a woman considering an abortion? I would make sure that she understood the facts of abortion and the procedures used and I would make sure she understood the risks involved physically and mentally. I would make sure she understood that there is such a thing as Post Abortion Syndrome and what that means for her. I would share my story with her.

Based on your own experience, what would you tell a court that believes abortion should be legal? I would tell the court what my experience with abortion has been like and explain to them that I made a decision without understanding truth. I would hope that my story would help explain to them what the effects of abortion can do to a person both physically and mentally. Not to mention what it does to an unborn child. It is amazing to me that such a clearly immoral and dangerous procedure could actually be permitted. The well being of so many is in jeopardy everytime a "choice" is made.

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[000529]

AFFIDAVIT

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The State of California

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N. E. H.

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Tell when and where your abortion occurred: Los Angeles January, 1971 UCLA referred me to a clinic in Valley

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How has your abortion affected you? realized I had done something deeply wrong – have gone to confession, gotten counseling (post-abortive) but the hardest part is forgiving yourself

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Based on your own experiences, what would you tell a woman considering an abortion? get all the facts – including the positives on choosing life & how women regret abortion but they don't regret having children. If you really can't parent there are plenty of people crying for the opportunity.

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Based on your own experience, what would you tell a court that believes abortion should be legal? If you understood a fraction of the pain & suffering abortion is causing women (& this society) *and* men you'd have to rethink this "right". Also consider the rights of the 4,000 daily who are denied life

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[000547]

AFFIDAVIT

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The State of Oregon

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Tinya E. Harper

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Tell when and where your abortion occurred: Tucson Medical Center – Tucson, AZ March 1976

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How has your abortion affected you? I experienced many years of guilt and sadness, and longing for my child, as I learned exactly what abortion is, the taking of a human

life. My child would be 26 yrs old. Because it was legalized, I thought it was O.K.

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Based on your own experiences, what would you tell a woman considering an abortion? That if your pregnant have the baby, you can do it, you will never regret. If you go through an abortion, as you realize it was your baby, you will always hurt, and regret.

Based on your own experience, what would you tell a court that believes abortion should be legal? Just because it is legal doesn't mean it is O.K. and safe. A woman has a choice to be with a man, or not, a choice to have sex, or not, and a choice to use birth control (like condoms, etc.) after that its not a choice it's a child, abortion is murder.

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[000551]

AFFIDAVIT

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The State of Arizona

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Karen Ruth Hartman

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Tell when and where your abortion occurred: Nov. 12, 1988 – York, PA

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How has your abortion affected you? First, I experience relief, then deep grief, guilt, nightmares, anger, saddness,

a feeling of worthlessness, depression, crying. I felt alone and lonely, for I could tell no one. I was silent, but wanted to speak out, but who would listen after all it was my choice. Who would understand. Only through God's love did I find relief.

Based on your own experiences, what would you tell a woman considering an abortion? I would inform her about the 'TRUTH' of abortion. The emotional, consequences & the physical. Plus that the life within her is a baby, abortion kills that life, nothing will bring that life back if abortion is chosen.

Based on your own experience, what would you tell a court that believes abortion should be legal? I chose abortion not because I wanted to end a life, rather in my mind during this crisis I kept thinking "It's legal, it must be okay." If it was illegal I would not have considered it nor would that option been considered by myself or my husband.

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[000562]

AFFIDAVIT

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The State of CO

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S H

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Tell when and where your abortion occurred: Fall (Oct) 1978 – Mpls, MN

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How has your abortion affected you? Following the abortion I became severely depressed, self destructive and suicidal. The guilt from my decision overwhelmed me. I now have an educated opinion of abortion and have a heart for women facing unplanned pregnancies.

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Based on your own experiences, what would you tell a woman considering an abortion? I would share my own experience with abortion, tell her that I know she is scared & at a major turning point in her life but that an abortion is not in her's or her child's best interest.

Based on your own experience, what would you tell a court that believes abortion should be legal? That abortion is not just a word, this is a living human being at risk of being surgically removed from the womb limb by limb. This person has a right to life like any others. We as human beings are *not* God & should not have the right to decide whether another should live or die.

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[000575]

AFFIDAVIT

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The State of Texas

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Dianne L. Hensley

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Tell when and where your abortion occurred: 10-31-72: Presbyterian Hospital, Albuquerque, NM

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How has your abortion affected you? For ten years I didn't think it had had any impact. However, w/ hindsight, I am sure it contributed to the breakup of the marriage & to a very self-destructive cycle of behavior for several years following.

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Based on your own experiences, what would you tell a woman considering an abortion? Don't – your life has already been changed forever, your choice is how, not if, you will be changed forever. Had I not found forgiveness in Christ & a constructive use for the experience, I'm not sure I could carry the burden.

Based on your own experience, what would you tell a court that believes abortion should be legal? I believe the meltdown of our culture – kids killing kids, etc. – is directly related to the message we send by legalizing abortion on demand. Our civilization depends on re-establishing a respect for life.

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[000587]

AFFIDAVIT

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The State of Florida

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K. M. H

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Tell approximately when and where your abortion occurred: 1979 San Diego CA 1982 OHIO

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How has your abortion affected you? I terribly regret it. The guilt I have sometimes is unbearable. I consider it the biggest mistake of my life. I can't begin to explain the heartache I have when I think of my other children that I never got to know. I have a grandson now and the heartache is even worse – I'm thankful for a merciful forgiving God – without Him I couldn't live with myself.

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Based on your own experiences, what would you tell a woman considering an abortion? Please don't!! Find any other alternative – Its something you have to live with for the rest of your life! And it hurts!!

Based on your own experience, what would you tell a court that believes abortion should be legal? Abortion is murder – And *no one* has the right to take the life of another. If abortion clinics were not available I never would have killed my children – its just too easy.

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[000599]

AFFIDAVIT

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The State of Georgia

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Melissa Hodges

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Tell approximately when and where your abortion occurred: Atlanta, GA July 27, 1976

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How has your abortion affected you? I was 16 at the time and thought it would end that day. It changed the way I felt about myself. My self esteem crumbled which affected the choices I subsequently made. My boyfriend went on his own way which compounded my self worth. I started drinking, did not choose college which I had always planned to do, and it affected my future choice in partners. It ultimately cost me my marriage many years later.

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Based on your own experiences, what would you tell a woman considering an abortion? Run the otherway! Abortion destroys 2 lives – one is definitely the child, but the mother dies slowly from the inside out as she(me) struggles to deal with the pain of the loss, grief, despair, and intense sadness over the choice to abort.

Based on your-own experience, what would you tell a court that believes abortion should be legal? Like Satan convinced Adam & Eve that eating the fruit was okay and they bought the lie, as a nation, so have we. My child had a beating heart and since I'm a human – the child was human; therefore my choice stopped that beating heart.

Taking a life regardless of its location is wrong – inherently wrong; The child's pain is over in a short time. Mothers continue to suffer for a lifetime, and like cancer, invades all areas of relationships with others & her own well being.

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[000600]

AFFIDAVIT

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The State of Virginia

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B H

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Tell approximately when and where your abortion occurred: Late January of 2000 at The Womens Clinic on the Boulivard in Richmond

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How has your abortion affected you? It has crushed me with depression, remorse and guilt. I am unable to forgive myself and it is hard for me to believe that God can forgive me. I have a 10 month old child now and every day I spend with her, I hate the fact that I killed my helpless, defensless baby. I live in constant fear that my daughter will be taken from me somehow because I don't deserve a child after what I did. I can't sleep. I have nightmares frequently about my aborted child. I feel loss. I feel I don't deserve anything.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? Your unborn baby deserves a *chance*. A chance to take its first breath to laugh, to love. A child brings joy! Even if you give him/her up for adoption. It will have a chance at life and you will *know* you did the *right* thing w/no regrets. The pain of killing your baby will weigh on you unmercifully forever.

Based on your own experience, what would you tell a court that believes abortion should be legal? I wish with *all my heart* that abortion had been illegal. I would have my child and not all this pain & suffering every day. There is *no* way to know the pain until after you have done the undo-able

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[000611]

AFFIDAVIT

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The State of California

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Deborah C. Howard

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Tell approximately when and where your abortion occurred: 5-1973 San Joaquin Hospital Bakersfield CA

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How has your abortion affected you? Has left me with much regret, however God has forgiven me and I know I will see this child in heaven in 1973 there was no education on life & conception. I honestly thought it was a thing, not a child. If I had known the truth, I would not have

done it. I became very ill for several weeks after & depressed, even though I did not even know the truth

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Based on your own experiences, what would you tell a woman considering an abortion? Not an option this is a human being from conception

Based on your own experience, what would you tell a court that believes abortion should be legal? Look at science, it proves this is a human being. The fact that it is in the woman does not change the truth. It is murder & something better change for the sake of the babies, mothers & this United States.

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[000626]

AFFIDAVIT

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The State of Georgia

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Lynn C. Hurley

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Tell when and where your abortion occurred: Augusta, GA – November 26, 1977 – at a clinic located directly across the street from the Medical College of Georgia.

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How has your abortion affected you? Emotionally & spiritually. 17 years I carried a heavy load of emotional pain, shame & guilt. I was so afraid someone might find out what I had done. I drank & smoked pot to mask emotional pain.

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Based on your own experiences, what would you tell a woman considering an abortion? The guilt, pain, shame, emotional numbing, etc. are much worse and last far longer than the embarrassment you may feel as an unwed mother pregnant for just 9 mos. Give your baby life and you can look back many years from now knowing you did the right thing.

Based on your own experience, what would you tell a court that believes abortion should be legal? It is never OK for a mother to kill her child, no matter what age that child is. In an abortion, not only is a child killed, but a mother is walking around wounded, and will carry the scar for the rest of her life.

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[000642]

AFFIDAVIT

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The State of Texas

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E K. J.

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Tell approximately when and where your abortion occurred: San Antonio.

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How has your abortion affected you? For many years I struggled with tremendous guilt and depression over what I had done. I had realized that I had killed my child. As I went through 5 years of infertility before having my daughter, I wondered if perhaps something had happened during my abortion which would not allow me to ever have children.

The day of the abortion stands out as the loneliest, most grief-filled day I had ever known.

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Based on your own experiences, what would you tell a woman considering an abortion? Women must know that the decision to have an ~~aborit~~ abortion is also a lifelong decision. It is not a quick fix and then done. They must know they are ending a life.

Based on your own experience, what would you tell a court that believes abortion should be legal? That if abortion – or the right to choose – is such a positive act for women, then why are so many women in pain over such a decision? Why are women ashamed, remorseful after having an abortion? Why aren't women told the truth about the aftermath of abortion?

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[000670]

AFFIDAVIT

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The State of Mississippi

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Melinda L. James

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Tell when and where your abortion occurred: September 25, 1990 Jackson, MS

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How has your abortion affected you? I have been afflicted by calamity, grief, and sorrow. My nerves were wracked, my heart broken. My baby cannot grieve or feel sorrow. It is dead. The first time I felt it move was the last time I felt it move. Anti-abortion demonstrators chanted outside the clinic, screaming "don't kill your baby" throughout the whole hellish time. I felt I was trapped in a nightmare. It recurs. Please don't let this happen to any more humans. It is so wrong; it is so painful.

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Based on your own experiences, what would you tell a woman considering an abortion? First of all, repent. Receive Jesus Christ as your Savior! Then fall on your face in worship and praise and call the Holy Spirit to protect you both from the ravening wolves that do seek to devour and destroy you both. Study the Bible daily. Don't even allow the "A" word to run through your mind as an option.

Based on your own experience, what would you tell a court that believes abortion should be legal? I stand as a living example that abortion is destructive to all people involved – especially the child, the mother, and the rest of each

family. Abortion should not be allowed or condoned in any free society. Abortion is an abomination to our Creator and to all creation. Abortion should be illegal at the very least! Just say no. It's on you now.

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[000671]

AFFIDAVIT

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The State of California

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Patricia A. Johnson

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Tell when and where your abortion occurred: Thursday, April 26, 1973, L.A. County, CA

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How has your abortion affected you? "Extreme trauma", "Ruined" my life, the most horrible guilt – these are all things I have felt at times through my life. Basically, I have suffered a very great loss – my own dear child. I regret it more than anything I've ever done. Great remorse and sorrow. It changes you forever. I miss him. He'd be 27 yrs. old.

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Based on your own experiences, what would you tell a woman considering an abortion? I would tell her not to do it and why not. I would share my own personal life story. I would present all available information on pre-born babies

from the day of conception, Read her Psalm 139, give her all information on Post Abortion Syndrome.

Based on your own experience, what would you tell a court that believes abortion should be legal? Post Abortion Syndrome can cause mental & emotional torment, as it did in my case. Prove to them that P.A.S. is REAL! I would show them pictures and videos of pre-born babies at every stage and what is happening at every stage. I would share my pain and grief – it is real. It's murder and it's illogical to treat the pregnancy with the unwritten rule, "If I want it it's a baby, if I don't, then it's not a baby.

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[000686]

AFFIDAVIT

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The State of Pennsylvania

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Kelly L. Kelchner

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Tell approximately when and where your abortion occurred: 4-29-87 Ralph P. Caschetta, M.D. 1561 Long Pond Rd. Rochester New York 14626

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How has your abortion affected you? Afterwards I became self destructive drinking heavily & doing drugs to try and forget what I had done. I got involved in many relationships with men looking for love and fulfillment. I was

riddled with guilt and shame. I wanted to die. I had a hard time keeping jobs afterward, I was lost & confused.

I am greatful to have found healing from my personal relationship with Jesus Christ.

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Based on your own experiences, what would you tell a woman considering an abortion? Don't do it. Killing your own child is a choice you will regret the rest of your life.

Based on your own experience, what would you tell a court that believes abortion should be legal? It did not help me in anyway. I wish I would have never had that choice. Actually it was the only choice planned parenthood gave me. I went for a pregnancy test, found out I was pregnant and they gave me a slip of paper with 3 abortion clinics. That was not really a choice, now was it?

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[000730]

AFFIDAVIT

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The State of Colorado

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Kristen Kelly

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Tell approximately when and where your abortion occurred: January 1989 in Roswell, Georgia

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How has your abortion affected you? I'm 32 years old and will never have children b/c of that abortion. I was very destructive afterwards and now I am married to a man who has children & unable to have more. I feel that I never loved myself enough after that day to think I ever deserved to have children. I am in counseling to deal with this grief. *there is so much more damage – it is hard to recount it all.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? Never to do it, because you grieve the loss of that child EVERYDAY. Even if you are a Christian you also don't think you are good enough to enter heaven, even though Jesus saves us.

Based on your own experience, what would you tell a court that believes abortion should be legal? I would tell that court that they are killing babies and butchering a mothers soul everytime they allow an abortion to happen.

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[000731]

AFFIDAVIT

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The State of Arizona

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Catherine Kimball

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Tell approximately when and where your abortion occurred:
1. Haleiwa, Hawaii 1971; 2. Santa Barbara Ca 1974

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How has your abortion affected you? 1st abortion: I suffered heavy bleeding & very painful uterine cramping with no medical attention even tho I contacted the doctor for help. 2nd abortion: doctor didn't remove the whole baby during procedure so I was called back in a few days for a subsequent DNC to remove the pieces. After I gave birth to my daughter in 1975 I realized with extreme horror what I had done having abortions. I had been robbed of the joy of motherhood for those two babies whose lives I ended. I still weep for those precious lives lost. I sought forgiveness thru salvation in Jesus Christ & God removed the weight of guilt from my heart.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? Life is too precious. Don't do it. It is murder & will bring guilt. Either keep the baby or put the baby up for adoption. The price is too high. There is help available.

Based on your own experience, what would you tell a court that believes abortion should be legal? I wish Roe vs Wade had never been passed then I never would have suffered from abortion. I was young & didn't realize what I was doing and I believe it is the duty of the courts to pass laws that will help protect its citizens.

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[000744]

AFFIDAVIT

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The State of California

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S C K

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Tell approximately when and where your abortion occurred: 1973 I was 15 yrs old, Somewhere in Garden Grove, Ca.

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How has your abortion affected you? I became severely depressed afterwards. I know after I had the abortion that what had happened was very wrong. I felt so much guilt and I started drinking very heavily on a daily basis & became a drug addict. I spent the rest of my teenage life living in a haze, I was never sober and I tried to commit suicide. I got clean for a while after getting married and made Jesus my Lord & Saviour yet yrs later I couldn't shake the depression so I started drinking heavy again and I made more suicide attempts. I felt so worthless and I hated what I had become, I would tell myself that I was an accident and that I should have never been born. I am sober now & living for Christ, Through the help of a Christian Counselor I was able to forgive myself & my parents & doctor, I know now that I've been forgiven & will one day see my baby in Heaven.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? Please do not kill your baby there are serious consequences and if you are to young please

have your baby and give him or her up for adoption, there are so many couples who desperately want your baby because they can't have any. Please give your baby a future!

Based on your own experience, what would you tell a court that believes abortion should be legal? Abortion is "murder." Abortion not only kills the innocent but it also causes severe and permanent emotional pain for a large majority of women and "I am one of them". "Abortion is just another Hollecust and it must end" May God have mercy on you in that day that you stand before Him!

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[000758]

AFFIDAVIT

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The State of Alabama

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Kathy Madison

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Tell when and where your abortion occurred: 5/29/78 Homewood, Birmingham, Alabama

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How has your abortion affected you? It has almost ruined my life. I have an ongoing deep sadness and huge void in my life that nothing can fill. Deep sense of guilt.

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Based on your own experiences, what would you tell a woman considering an abortion? I would tell her if she cared

about the rest of her life, not to do it, because it would ruin her life and the hurt never goes away.

Based on your own experience, what would you tell a court that believes abortion should be legal? I would have never considered abortion if it had not been legal. My aunt said abortion would not be legal if it was not OK. I was stupid to believe her.

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[000783]

AFFIDAVIT

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The State of California

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Candice Martin

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Tell when and where your abortion occurred: March 1996 San Diego County

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How has your abortion affected you? I have been suicidal, depressed, had extreme anxiety, had nightmares, suffered from greif & self destructive behaviors.

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Based on your own experiences, what would you tell a woman considering an abortion? Not to do it. I would explain that the effects of abortion reach into every aspect of your life and fester, making every plan & dream die along with your child.

Based on your own experience, what would you tell a court that believes abortion should be legal? I would tell them that I was raped & therefore "justified" in my abortion, but it didn't change a thing. I still suffered because I was led to believe that taking my child's life was ok. It was not & I have been living with that for almost five years.

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[000802]

AFFIDAVIT

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The State of Michigan

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Debra Ann Mays

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Tell approximately when and where your abortion occurred: October 1985 in a Women's clinic in Lansing, MI.

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How has your abortion affected you? Initially I was numb and remained in shock from October 1985 until 1989 and I did anything to feel again; I was fighting with my friends more and lost many of them, I became more sexually active – anything to *feel* again. Then when the hurt surfaced I drank alcohol – anything now to cover the pain. Currently, I have gone through a grieving and healing process and there is still not a day that goes by that I don't regret my decision. It is the deepest loss a woman can ever know.

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Based on your own experiences, what would you tell a woman considering an abortion? Abortion may seem like the right answer now but if it is truly the right answer it will always be right so don't hurry with this decision. Think about the physical consequences, the emotional pain of losing your child and the spiritual death you will go through. This is not the right answer for anyone who wants to experience less pain & more freedom.

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Based on your own experience, what would you tell a court that believes abortion should be legal? If abortion had not been legal I would not have been advised the way I was – My child I killed is named "Amber" and I wish the courts and governments would give as much consideration to saving my child as they do issuing "Amber Alerts" across the country to save children currently living. I would have my child today, in my arms or an adoptive mother who wants children so badly, if abortion wasn't legal.

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[000823]

AFFIDAVIT

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The State of OHIO

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Shannon L. McGuire

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Tell approximately when and where your abortion occurred: 1985, Columbus, Ohio, 1989, Columbus, Ohio 1990, Columbus, Ohio

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How has your abortion affected you? Post-Abortion Syndrome – Almost All Psychological Effects and Had to go through Infertility Treatment to find out I was Physically Fine.

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Based on your own experiences, what would you tell a woman considering an abortion? Never Do It! Give Up your Child for Adoption or Parent! Remain Abstinent and you won't have to deal with the consequences of "Sex Before Marriage."

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Based on your own experience, what would you tell a court that believes abortion should be legal? I have seen and experienced more consequences in my life; and pain that only Someone who has experienced Abortion Can Feel. I will give my testimony any time to prevent more abortions from happening in the U.S.

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[000846]

AFFIDAVIT

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The State of California

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P.B.

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Tell approximately when and where your abortion occurred: December 22, 1977. Pregnancy confirmed at a

Planned Parenthood in Bloomington, Illinois; performed at National Health Care Services, Peoria, IL Case #7717

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How has your abortion affected you? Words can in no way describe the deep, profound loss, guilt, – horror of *knowing* that I *killed my baby*, my very own child, and it is legal! I was at an extremely vulnerable time in my life, in a crisis situation and I wasn't given all the information I needed to make an informed decision. (Such as fetal development & emotional repercussions)

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Based on your own experiences, what would you tell a woman considering an abortion? *Don't do it* – Please! I would give her information – details about the child growing inside her. There isn't a day that goes by that I don't think of the person I let the abortionist kill. *This will haunt me the rest of my life*. I now have 2 biological children living & 1 dead to abortion.

Based on your own experience, what would you tell a court that believes abortion should be legal? The laws *must protect* the women and children in these crisis situations – the courts, the clinics, the doctors all let me down when I most needed true compassion and support. It is the antithesis of compassion to allow and assist a woman in killing her child. It's a person, no matter how large or small, or how young or old!

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[000864]

AFFIDAVIT

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The State of TEXAS

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T M

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Tell approximately when and where your abortion occurred: February, 1973 in a hospital only days after it was legal

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How has your abortion affected you? At first I had deep depression. I was very sorry right away & I knew I would never make that mistake again! I became a Christian a few weeks later & my life turned completely into a new direction. However, I carried a deep loss in my heart. After I married and had children, the loss became even greater because the reality that it had been a "real" baby set in. God has given me a wonderful family & brought healing to my heart, but what I did will always be a reality. I can't un-do or change that wrong decision! I did something very wrong. It was not rightfully my choice. One of my children is missing from my life.

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Based on your own experiences, what would you tell a woman considering an abortion? Life is valuable! It is a precious gift. Circumstances change. Children always bring joy & life to us. God has promised provision to those who trust him!

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Based on your own experience, what would you tell a court that believes abortion should be legal? Making it easy, doesn't make it right. If we don't value the life of unborn babies then our society doesn't value life at all. Each one of us was once in our mother's womb. Some of our parents had it rough, they were inconvenienced, too, but they made right choices to be responsible to the gift of life they carried & gave birth!

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[000878]

AFFIDAVIT

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The State of Missouri

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MELANIE L. MILLS

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Tell when and where your abortion occurred: On March 26, 1998, in Granite City, Illinois at Hope Clinic for Women

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How has your abortion affected you? For about six months I was in denial and then I started having emotional problems. I had to attend several counseling sessions, receive post traumatic treatment and extensive psychiatric care and have been hospitalized twice this year for all the emotional distress. I have attempted suicide this year and in June I found out that I have scar tissue and endometriosis.

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Based on your own experiences, what would you tell a woman considering an abortion? Never to have one. It is the worst mistake because you will have to live with it every single day.

Based on your own experience, what would you tell a court that believes abortion should be legal? I would tell them that it is 1970's thinking. Roe v. Wade needs to be overturned. It is barbaric. It is inhumane. The baby is killed and this should not go on in a democratic society. It exploits women.

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[000882]

AFFIDAVIT

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The State of Tenn.

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Robin Montgomery

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Tell approximately when and where your abortion occurred: 1985 High Point, N.C.

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How has your abortion affected you? For starters I felt so guilty and ashamed I considered myself a murderer and unworthy of life. I became disconnected unable to really extend love or have meaningful successful relationships. There were times when I wished I would just stop breathing. Later when I became pregnant I thought that I would lose that child, I thought that God would punish me for

the first baby by taking the second one. I constantly thought about how the child looked, eye color, smell, complexion.

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Based on your own experiences, what would you tell a woman considering an abortion? I would tell her that the baby would be gone in an instant, but the pain, guilt and absolute torture and anguish will only begin.

Based on your own experience, what would you tell a court that believes abortion should be legal? I would tell the court that just because man legalizes an act doesn't make that act morally right. I would also remind them that man can never override the power and authority of God!!

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[000910]

AFFIDAVIT

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The State of Tennessee

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M L M

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Tell approximately when and where your abortion occurred: October 1980, Memphis Center for Reproductive Health

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How has your abortion affected you? Since I had my abortion, nothing in my life has gone right. I have suffered

from depression, an ongoing sense of shame, and a tremendous amount of anger due to the fact that I allowed myself to be coerced into having this awful procedure performed. It has also affected my ability to be a proper mother to my children.

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Based on your own experiences, what would you tell a woman considering an abortion? Don't do it. It isn't worth it. You'll regret it as long as you live. Abortion is a permanent solution to a temporary problem.

Based on your own experience, what would you tell a court that believes abortion should be legal? I would tell the court that abortion is murder and should be outlawed. Roe v. Wade should be overturned.

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[000922]

AFFIDAVIT

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The State of PA

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B G M

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Tell approximately when and where your abortion occurred: May 1982 Hillcrest Abortion Clinic Harrisburg, PA

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How has your abortion affected you? My abortion has contributed to 4 psychiatric hospitalizations. I had such

guilt and shame that I couldn't share with others because it was my dirty secret. It affected my marriage two years later to my aborted child's father. It was an unspoken loss & sin between us that eventually helped ruin our marriage which broke up after 12 years. It has also affected my relationship with my son because I now know that I murdered his sibling through having an abortion. It was the biggest mistake of my life.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? Please don't do it. Abortion does not fix things, it makes even more problems and can ruin your emotional/spiritual health.

Based on your own experience, what would you tell a court that believes abortion should be legal? By making abortion legal it makes it appear that killing your unborn child is perfect alright and thus deceives people.

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[000926]

AFFIDAVIT

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The State of Texas

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Camelia M. Murphy

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Tell approximately when and where your abortion occurred: 1972 (Dr. Sidney Knight), 1978 (Dr. Knight), 1980 & 1981 All New Orleans, LA (Delta Women's Clinic)

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How has your abortion affected you? I have suffered with low self esteem, self hatred, suicidal impulses constant anxiety (esp. about sex and about making decisions), marital problems difficulty in bonding with my living children, guilt, shame, difficulty in daily functioning feelings of isolation from others, feelings of inferiority, failure to progress in labor (resulting in 2 c-sections)

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Based on your own experiences, what would you tell a woman considering an abortion? I could tell them "please" not to take the life of their unborn child, that they will regret it for the rest of their life if they do. I would also offer to support her in any way that I'm able.

Based on your own experience, what would you tell a court that believes abortion should be legal? I would tell the court that the only people who "benefit" from abortion are the abortions providers (in an economic sense) I would tell them that our whole country is suffering from the pain and destruction of abortion, including the unborn children, mothers, fathers, sisters, brothers, grandparents . . . (The list is endless.)

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[000937]

AFFIDAVIT

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The State of Kentucky

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Maranda Music

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Tell approximately when and where your abortion occurred: August 1993, Louisville KY

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How has your abortion affected others in your life? I treated others mean, I did not want to be around my loved ones.

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Based on your own experiences, what would you tell a woman considering an abortion? It's not worth it. By getting an abortion you may think you are helping yourself and solving a problem but your not you are causing more pain and heartache on yourself. You will never be able to forget.

Based on your own experience, what would you tell a court that believes abortion should be legal? Abortion is wrong. Abortion is killing a human being that deserves to live. We all should have the right to live.

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[000942]

AFFIDAVIT

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The State of Pennsylvania

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MARY L. NEIKAM

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Tell when and where your abortion occurred: Winter 1978 at Women's Suburban Clinic, Paoli, PA

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How has your abortion affected you? I suffered from depression, the lack of ability to get close to anyone. I lost perspective on my life and began drinking more. My desire to have a baby increased, I longed for that baby.

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Based on your own experiences, what would you tell a woman considering an abortion? You will be just as much a victim as that baby. The baby is alive & knows who you are you will always grieve for your child even if you don't recognize the symptoms you experience as grief.

Based on your own experience, what would you tell a court that believes abortion should be legal? Abortion is harmful to women; spirit, soul & body (mentally, emotionally & physically. It's not natural for a woman to dispose of her own child. There are long lasting effects.

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[000955]

AFFIDAVIT

The State of Wisconsin

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T.M.N.

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Tell when and where your abortion occurred: PROFFESSIONAL BUILDING IN EAU CLAIRE, WI APPROXIMATELY JANUARY 3, 1985.

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How has your abortion affected you? I REALIZED THE TRUTH BEFORE LEAVING THE ROOM. DEVELOPED MANIC-DEPRESSION, SLEEPING DISORDERS, PANIC DISORDERS OVER NEXT 11 YEARS UNTIL A SEVERE BREAKDOWN INTO CLINICAL DEPRESSION OCT OF 1996, WHICH I DEAL WITH DAILY NOW.

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Based on your own experiences, what would you tell a woman considering an abortion? CONTRARY TO WHAT PRO-CHOICERS CLAIM, THERE ARE MANY PHYSICAL AND PSYCHOLOGICAL RISKS TO ABORTION. I WOULD SHOW DIFFERENT RESOURCES, EXPLAINING WHERE I HAD MANY WOMEN I KNOW COULD BE GROUPED IN. MOST OF ALL, HAVING AN ABORTION IS THE BEGINNING OF LONG-TERM PROBLEMS.

Based on your own experience, what would you tell a court that believes abortion should be legal? BEYOND THE CONSTITUTIONAL PROBLEMS OF "ROE V WADE" AND INFORMATION USED FOR THE DECISION, I COMPARE THIS WITH MEDICINES AND PROCEDURES THAT REQUIRES STUDIES SHOWING IT'S SAFENESS. THERE ARE MANY STUDIES AND WRITINGS SHOWING

LONGTERM NEGATIVE RESULTS, PARTICULARLY PSYCHOLOGICALLY, OF ABORTION THAT ARE BEING IGNORED.

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[000956]

AFFIDAVIT

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The State of North Carolina

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A.C.N.

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Tell when and where your abortion occurred: New Orleans, Louisiana fall 1981

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How has your abortion affected you? My abortion took away my sense of self-worth and self confidence. It has made me question my ability to make competent decisions.

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Based on your own experiences, what would you tell a woman considering an abortion? Do Not Do It!

Based on your own experience, what would you tell a court that believes abortion should be legal? Please make sure a woman knows ALL the options that are available, and is aware of the consequences – physical and mental – that accompanying abortion. The procedure only takes a few minutes, the pain lasts a lifetime.

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[000971]

AFFIDAVIT

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The State of Nevada

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Christian M. Ongley

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Tell approximately when and where your abortion occurred: May 1993 Newport DE

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How has your abortion affected you? I grieved the loss/murder of my child so much that I would have preferred death. I wanted my baby back so desperately that I purposefully got myself pregnant and had twins (March 19 1995). One boy & one girl. It was psychologically more devastating than being molested and sexually abused by my biological father. The abortion will be with me for the rest of my life. I have already begun ingraining in my children that sex is for marriage and marriage alone I always fear that I won't be able to have more children.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? even if it's rape – give the baby up for adoption. If it's incest pray about it.

Based on your own experience, what would you tell a court that believes abortion should be legal? Explain to me why I was legally able to murder my child but if I had killed my father who had molested me at seven yrs of age and then sexually abused me when I was 12 to about 16 – almost

17, I would have been sentenced. My baby did nothing wrong; my dad did.

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[000992]

AFFIDAVIT

The State of Texas

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Kaye Peterson

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Tell when and where your abortion occurred: Spring, 1975, doctor's office, San Antonio, TX

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How has your abortion affected you? I believe it made me neurotically fearful of responsibility. I was just sad for 22 years.

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Based on your own experiences, what would you tell a woman considering an abortion? Though you may be in terrible anguish, please do the right thing. You already have a baby – not a potential one, as I told myself. How I wish I had talked to someone and been willing to listen.

Based on your own experience, what would you tell a court that believes abortion should be legal? You may tell yourself you're only trying to help women, but the opposite is true. It's hard to think clearly in a crisis pregnancy. We

need the law to help us, not hinder us in making good decisions.

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[001034]

AFFIDAVIT

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The State of Minnesota

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Lauralee Peterson

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Tell approximately when and where your abortion occurred: December 1981

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How has your abortion affected you? My abortion has given me 22 years of sorrow and regret. When I realized the development of my child and the fact that abortion stopped my child's beating heart I was filled with anger and sorrow. At the age of 16 I was not mature enough to make such a decision. My other children also know they have a missing sibling.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? Abortion kills – solves nothing. I would tell her she is already a mother, her choice is to kill, to parent or to give the child for adoption. Abortion is permanent, can never be changed or replaced – the grief never stops.

Based on your own experience, what would you tell a court that believes abortion should be legal? A government's job is to protect innocent life and to ensure justice. Abortion is

a grave injustice, like slavery it relegates some people as less than human. It is completely immoral. It is murder.

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[001035]

AFFIDAVIT

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The State of NEVADA

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JACCI PIERCE

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Tell when and where your abortion occurred: APRIL 2000; LAS VEGAS NEVADA

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How has your abortion affected you? HAVING THAT ABORTION, KILLING MY BABY, HAS AFFECTED MY LIFE IN EVERY ASPECT. IT CREATED SEVERE EMOTIONAL DAMAGE THAT ALSO CAUSED RELATIONSHIP DAMAGE NOT TO MENTION ONLY PUTS ANOTHER PROBLEM ON TOP OF ANOTHER PROBLEM WHICH MAKES IT EVEN MORE DIFFICULT TO COPE.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? I WOULD TELL THAT WOMAN THAT IT WILL BE THE WORST EXPERIENCE OF THEIR LIFE. THAT THEY ARE TRYING TO PUT A BAND-AID OVER THE REAL SITUATION BUT INSTEAD THEY ARE CARVING A SCAR AND I WOULD TELL THEM ALL FACTS!

Based on your own experience, what would you tell a court that believes abortion should be legal? I WOULD TELL THEM THAT THEY

SHOULD FREE ALL THE PRISONERS LOCKED UP FOR MURDER! I WOULD TELL THEM THAT OUR COUNTRY IS GOING TO SLOWLY FADE AWAY . . . ANYONE WHO THINK COLD KILLING IS A 'WOMANS' SOMETIMES EVEN A *CHILDS* CHOICE IS OK SHOULD APPRECIATE *THEIR* BREATH MORE & THANK THE LORD THEY HAVE A CHOICE TO LIVE!

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[001044]

AFFIDAVIT

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The State of MS

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Pamela D. Pigott

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Tell approximately when and where your abortion occurred: WASHINGTON, DC FEB 1973 or 1972 AUG 1973 or 1972

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How has your abortion affected you? TO THIS DAY, I CONSIDER MYSELF A MURDERER, ONE WHO HAS TAKEN THE LIFE OF AN INNOCENT CHILD. THERE IS NOTHING I HAVE BEEN ABLE TO DO THAT WOULD *EVER* ABSOLVE ME OF THIS CRIME EXCEPT THE BLOOD OF CHRIST. DRUGS, ALCOHOL AND SEX WERE THINGS I USED TO KILL THE ANGUISH OF WHAT I DID NOT ONCE BUT *TWICE*. NONE OF THAT WORKED.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? DON'T DO IT! DO NOT DO IT! UNDER ANY CIRCUMSTANCES. DO NOT DO IT!

Based on your own experience, what would you tell a court that believes abortion should be legal? IT IS NOT IN THE BEST INTEREST OF THE WOMAN TO MURDER HER BABY AND IT IS NOT IN THE BEST INTEREST OF SOCIETY TO CONDONE THE THE ACT. TO SHED INNOCENT BLOOD FOR ANY REASON IS WRONG; TO SHED IT FOR THE SAKE OF CONVENIENCE IS AN ABOMINATION. "THE HAND THAT ROCKS THE CRADLE RULES THE WORLD." OUR CRADLES ARE FILLED WITH BLOOD AND WE ARE SURPRISED WHEN CHILDREN KILL CHILDREN.

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[001045]

AFFIDAVIT

The State of Texas

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Bethann Pritchard

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Tell when and where your abortion occurred: December 19th, 1980; abortion clinic in Pasadena, Texas, behind Sruthmore Hospital. Dr. Swade (Schrade?) was the doctor.

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How has your abortion affected you? How has it *not* affected me!?!? Every area was affected – more drugs, alcoholism, promisuousness, inability to have deep, sustained relationships. *Inability to conceive* since my abortion.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? I would tell her not to have one – it destroys your life and kills your baby. I would give *anything* to be able to go back and make a different choice – to choose life, for me and my baby.

Based on your own experience, what would you tell a court that believes abortion should be legal? No, No, No – abortion should NOT be legal. I wish it hadn't been legal when I had my abortion. There are other means to deal with an unwanted pregnancy – adoption, foster homes, carrying to term – there is only *one way – LIFE*!! Abortion *IS* murder, and murder is against the law!!!

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[001065]

AFFIDAVIT

The State of Texas

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PATRICIA PULLIAM

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Tell when and where your abortion occurred: 1974 Detroit, Michigan

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How has your abortion affected you? Early on it caused depression and marital problems. Later it led me to begin counseling at a crisis pregnancy center in Houston, TX.

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Based on your own experiences, what would you tell a woman considering an abortion? The solution of ending the life of your own child is the worse violence you can do to yourself. By removing, by force, a human life you demean yourself as a woman totally.

Based on your own experience, what would you tell a court that believes abortion should be legal? The Legal Killing of your own child is an act of desperation and confusion. If full knowlege of all the aftermath of abortion was made public it's social acceptability would become less and less. If abortuary facilities were held accountable to the same degree as other medical facilities this would all stop.

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[001067]

AFFIDAVIT

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The State of Texas

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Lynn F. Rasberry

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Tell approximately when and where your abortion occurred: 1980 Houston Texas

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How has your abortion affected you? I now realize that this was sin and have gone to the Lord to ask for forgiveness. Unfortunately 20 years has passed and I have not had another child. That one pregnancy was my only chance to bare children. This has caused me much agony

and personal pain. I have had to deal with anger and relationship problems and was divorced after the abortion. I have not remarried and feel this is also due to my abortion. I have had to deal with issues regarding my worth as a woman since I am not married and have no children If I would have known the risks and complications from abortion both physical, emotional, and spiritual, I would not have had an abortion.

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Based on your own experiences, what would you tell a woman considering an abortion? I would make sure that the woman was informed regarding all the possible risks to her health and emotional wellbeing and also to the affect oh her relationship with God and her future without this child in her life.

Based on your own experience, what would you tell a court that believes abortion should be legal? I would tell the courts that abortion is a crime against humanity. A woman was not created to kill her own children. This is contrary to her nature and legalized abortion encourages the woman to take this option that will affect her for life. The child will never leave her emotionally, but will always exist.

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[001082]

AFFIDAVIT

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The State of Tennessee

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R.W.R.

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Tell when and where your abortion occurred: February, 1989, Marina del Rey, California

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How has your abortion affected you? I feel guilty. I love children but don't really feel that I deserve one. I have been diagnosed with endometreosis (?) and may not be able to have any now anyway. Don't really think I can ever get close enough to anyone to trust them with this shame so I am still single.

* * *

Based on your own experiences, what would you tell a woman thinking of having an abortion? Get all the facts and get all the options. 9 months of discomfort are nothing compared to the lifetime of guilt and shame you will feel. Not to mention the horror when you realize what you did to your own child. Be very sure you can live with the outcome.

Based on your own experience, what would you tell a court that believes abortion should be legal? Legal murder is still murder. We have no right to decide who lives or dies nor should we. If the truth about abortion were made public I cannot imagine any decent human being approving of this

horror. We condemned Hitler. How can we not condemn ourselves for allowing this to continue.

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[001091]

AFFIDAVIT

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The State of TEXAS

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Dorothy Rogers

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Tell when and where your abortion occurred: FEBRUARY – 1975 10½ weeks MEDICAL RESEARCH ASSOCIATES CLINIC, SAN ANTONIO TEXAS DR. BRANDON CHENAULT

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How has your abortion affected you? YES . . . EMOTIONAL PAIN AND TORMENT FOR YEARS UNTIL GOD FORGAVE AND HEALED ME. IT HAS AFFECTED ME PHYSICALLY AS WELL. I CANNOT HAVE CHILDREN.

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Based on your own experiences, what would you tell a woman considering an abortion? DON'T DO IT! YOU WILL REGRET IT FOR THE REST OF YOUR LIFE. NO MATTER HOW BAD YOUR SITUATION IS, THERE ARE ALTERNATIVES. IT'S NOT WORTH THE HEALTH RISKS INVOLVED. YOU ARE KILLING A HUMAN BEING.

Based on your own experience, what would you tell a court that believes abortion should be legal? IT IS JUST AS IF I

KILLED MY CHILD. THE ONLY DIFFERENCE WAS THAT HE WAS INSIDE OF ME AND THAT MADE IT LEGAL. IF HE WERE OUTSIDE MY BODY, IT WOULD HAVE BEEN MURDER.

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[001120]

AFFIDAVIT

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The State of California

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Gayle Schroeder

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Tell approximately when and where your abortion occurred: Feb 25, 1994 – Upland, CA Planned Parenthood

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How has your abortion affected you? I have never recovered & never will. I know God has forgiven me, but I can't forgive myself. I feel dirty & unworthy. Not a day goes by that I see a child & wonder what ours would have been like. If planned parenthood would have told me there was other help or alternatives but never said anything. I still remember the sound of the vacuum at the abortion. But through it all I want to turn something so terrible into something positive. I want to help others not to make the same mistake & overturn Roe vs Wade

* * *

Based on your own experiences, what would you tell a woman considering an abortion? Don't listen to abortionists see a sonogram, get facts on when a babys heart first beats.

You can never go back. Abortion is not something you correct & make right again. It's final I have so much I could draw on over these past years to help someone.

Based on your own experience, what would you tell a court that believes abortion should be legal? every human being has rights that includes unborn babies – having an abortion does not free you – it makes you a prisoner to the horrific act you commited. There is no need for abortion – thousands would love to adopt & birth control is plentiful. Abortion is a money maker for abortionists who have no respect for human life.

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[001146]

AFFIDAVIT

The State of Texas

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Suella Shaner

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Tell when and where your abortion occurred: 1. 1968 private home Dallas, TX 2. 1978 clinic – Dallas Texas

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How has your abortion affected you? I live with the knowledge that my 2 aborted children might have been bone marrow matches for my 27 year old son who died of cancer 3½ yrs. ago.

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Based on your own experiences, what would you tell a woman considering an abortion? There will be long term

emotional, mental, and spiritual side-effects that will need to be dealt with.

Based on your own experience, what would you tell a court that believes abortion should be legal? I had no real choice in the matter. There are many outside pressures to abort and no education on the matter of consequences. It is not our choice many times . . . it is lambs to slaughter.

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[001161]

AFFIDAVIT

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The State of OHIO

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Amy Shatrick

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Tell approximately when and where your abortion occurred: Dec. 1990 in Akron Ohio

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How has your abortion affected you? Guilt, Guilt. Guilt. I always think of it on the anniversary. My baby would be 13 this August. I think of that every year. Unbelievable sadness. I drank heavily suffered nightmares, bad relationships, shame cervical cancer, irregular pap smears. I can't believe I killed my first baby! No one wants to discuss it. It's my secret. I never heard about what abortion actually did to the fetus or mother. It's a lie, that it is a good thing. It is a death sentence for baby & very possibly the mother physically mentally spiritually.

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Based on your own experiences, what would you tell a woman considering an abortion? I would tell her how the baby looks, what it does at 8 wks & show her pictures. Offer alternatives tell her that her & her baby are valued and loved. I would plead with her not to do it. I would share all I had experienced.

Based on your own experience, what would you tell a court that believes abortion should be legal? THAT ABORTION IS MURDER – Premeditated. It takes the babies life and ruins the mothers. It is infantacide & genocide. God will hold them accountable for there role in this.

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[001162]

AFFIDAVIT

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The State of SC

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Lawrie J. Sikkema

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Tell when and where your abortion occurred: 1979 – Navy Hospital in Okinawa Japan;

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How has your abortion affected you? Physically – tubal pregnancy, hard to concieve 3 miscarriages from scar tissue; Emotionally – severe depression, guilt, suicidal thoughts, drug & alcohol abuse, eating disorder, low self-esteem, violent anger, etc!!!

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Based on your own experiences, what would you tell a woman considering an abortion? To *PLEASE* know *EVERYTHING* about abortion before doing it (especially after-effects; other options – Adoption – pregnancy homes, Gov't. help – local help

Based on your own experience, what would you tell a court that believes abortion should be legal? Unborn, children (at *ANY* stage of life) should have the *RIGHT* to be born – these babies do not have a voice, therefore *WE* need to be their voices and speak-up for them.

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[001174]

AFFIDAVIT

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The State of TN

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Myra Simons

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Tell approximately when and where your abortion occurred: 1986 – Planned Parenthood, Memphis, TN

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How has your abortion affected you? The memory haunts my life – it is ever Present. I think about how old my child would be, what I would have named her – and all the great times we would have had. I miss my baby. It has been so long ago, but I still weep about it. I can't count the times I have walked through that Planned Parenthood Clinic in my mind.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? Please. Please stop – just because some misguided judges, say it is legal does not mean it's good for you – it is the worse decision you will ever make

Based on your own experience, what would you tell a court that believes abortion should be legal? So many lives have been lost, so many women are suffering. It is apparent our society and our legal system cares nothing for the child, but if you truly care about the woman – then stop this madness – it is so destructive to women.

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[001175]

AFFIDAVIT

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The State of Indiana

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Katy Smith

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Tell approximately when and where your abortion occurred: February 1997, Indianapolis IN

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How has your abortion affected you? In countless ways, I suffered from depression, anxiety, nightmares, fear of never being able to be pregnant again, I distrusted people. I was very angry, I stayed in a co-dependent relationship that was emotionally debilitating. I eventually sought counseling and found relief but to this day I deeply regret

my abortion, I deeply miss my child, the way that I view my life is pre & post abortion and I am not able to remember events in my life as well since the abortion

* * *

Based on your own experiences, what would you tell a woman considering an abortion? This is not an answer to the problem. That this abortion will only cause further problems in her life, she will battle depression, grief, anger, loss. She could also downward spiral into a life of drinking, STD's, more unwanted pregnancy and abortions

Based on your own experience, what would you tell a court that believes abortion should be legal? This act is an offense to our women. It is morally wrong, a barbaric, tortorous act that murders children and causes women to suffer needlessly for years. Feminists of today should realize this isn't a choice, they should fight for the mental, emotional, and physical health of women and the children they are carrying. Life is precious and should be preserved. If abortion was illegal, I never would have had one. There is no good reason, ever, to have an abortion.

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[001186]

AFFIDAVIT

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The State of Wisconsin

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Tracy A. Stalsberg

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Tell approximately when and where your abortion occurred: May 16, 1987 in Chicago, IL

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How has your abortion affected you? The greatest way it affects me is in the overwhelming regret I feel and must live with for the rest of my life. In addition, I have suffered other emotional difficulties that I definitely contribute to my abortion experience. One area has been trying to deal with intense anger issues that come from feeling that I was incredibly deceived by the abortion industry. My life was changed forever, in a most horrible way, that day 15 years ago when I killed my own child and I can never take it back.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? I would tell her that abortion is not the end of your problems, but rather the beginning! I would share my own experiences and ask her if she could live with the regret of killing her own child – A CHILD, NOT A BLOB OF TISSUE – for the rest of her life?

Based on your own experience, what would you tell a court that believes abortion should be legal? I would tell them that I know that there are TWO victims of abortion – one dies physically and the other dies emotionally. Abortion DOES NOT help women, rather it hurts women!

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[001198]

AFFIDAVIT

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The State of Kansas

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Michelle Stewart

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Tell when and where your abortion occurred: in the spring of 1981 in Wichita, KS

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How has your abortion affected you? It has left me devastated. I will never feel whole again, until I get to heaven, where I will see my baby for the first time.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? I would beg her not to do it – not to kill her baby! I would tell her of the unimaginable guilt, sorrow and horror she will live with every day of her life if she does. It will be the one thing in her life that she will always regret doing.

Based on your own experience, what would you tell a court that believes abortion should be legal? They are wrong. ABORTION IS MURDER and should NEVER be legal, under any circumstances. Even if I were raped, and pregnant I would not abort – No child is a mistake in God's plan. Abortion is a lie, a lie to the mother, a lie to

society, it is time for the truth. The truth is that ABORTIONS ARE WRONG!!

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[001214]

AFFIDAVIT

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The State of OREGON

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Sherri Suminski

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Tell when and where your abortion occurred: Jan. 1985 Lovejoy Clinic, Portland OR

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How has your abortion affected you? The grief and guilt have been tremendous. Physically I had no complications. Mentally and spiritually I was crushed, moved into denial. When I bore my first child it became very clear what I had done – killed a living, viable baby.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? You think this is a good solution to your problem, but the consequences will be with you all your life, creating worse problems. Do not kill the life inside you, your baby, because you see it as a problem. See that LIFE inside you in the light of truth.

Based on your own experience, what would you tell a court that believes abortion should be legal? No one, mother or

father, has the right to end an innocent life. Why is it legal for a mother to kill her child because it's inconvenient, unwanted a problem? Why is her body more important, her choice more important than a living child? Why are you allowing a woman to choose to hurt herself, her child?

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[001229]

AFFIDAVIT

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The State of Iowa

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T.T.

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Tell when and where your abortion occurred: September 9, 1981

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How has your abortion affected you? I developed an infection immediately and I believe it then led to painful menstrual cramps. I was also depressed for several years

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Based on your own experiences, what would you tell a woman considering an abortion? I would tell her the facts of the procedure and what it does physically then I would explain the emotional effects. And then I would say "It's just plain murder" Don't do it.

Based on your own experience, what would you tell a court that believes abortion should be legal? Life should be held as precious and sacred and should be protected by the

courts. Murder is never right. The law of this nation should protect the "life" of the unborn! I implore you to make and uphold laws that make abortion illegal.

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[001250]

AFFIDAVIT

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The State of Texas

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Marelean Thomas

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Tell approximately when and where your abortion occurred: 1972 Minneapolis, Mn.

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How has your abortion affected you? I was taught or told the fetus was not life. I learned better and sence I have suffered from guilt and severe depression. It has been very difficult to forgive myself. I still take antidepressants. I am haunted by the fact I have murdered the innocent. I am unable to relate to men they way I once did.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? To abort a pregnancy is murder. You will not have peace or stability in your life. It will be difficult to have a loving relation with your husband and family.

Based on your own experience, what would you tell a court that believes abortion should be legal? Abortions should not be legal because it is murder. Also take into consideration, the effect it has on the person and how the person affect society. Please overturn ROE VS WADE.

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[001254]

AFFIDAVIT

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The State of Arizona

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Peggy Sue Trakes

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Tell approximately when and where your abortion occurred: Good Samaritan Hosp; Oct. 1970

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How has your abortion affected you? I had very low self-esteem after my abortion and began drinking & using drugs. I eventually married 3 times and had depression on an annual basis around the time of my abortion. My eventual ability to bond with and mother my daughter was drastically reduced b/c I had never healed from the abortion of my first child.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? No amount of rationalizing now will be worth the irreversible consequences of knowing forever that you took your baby's life. You will regret it for

the rest of your life. No reason is good enough for the pain mentally.

Based on your own experience, what would you tell a court that believes abortion should be legal? You have the power over life & death. Sometimes wrong is wrong no matter the cost. Please look @ the results of the legalization of abortion & what it has become – including late-term abortions. Why do we prosecute a criminal who kills a fetus in the process of a crime – but we don't consider it illegal if the mother consents??

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[001269]

AFFIDAVIT

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The State of Ohio

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Beth Ann Valantine

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Tell when and where your abortion occurred: Dr. Hx. Kramer – 107 Javit Court. Youngstown, Ohio 44515 12/19/83 – Youngstown Assoc. in Obstetrics & Gynecology

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How has your abortion affected you? I was suicidal; full of guilt and shame. Suffered from fear & depression. Caused marital & relational problems, crying spells, anxiety, panic attacks, sleep disturbances. Suffered most on anniversary of abortion. Physically had difficulty carrying my children

(2) to term. Had a miscarriage. Couldn't believe God could love me.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? It is never the answer! It is not the "easy way out". It would've destroyed me if I didn't get help.

Based on your own experience, what would you tell a court that believes abortion should be legal? My choice almost destroyed my life. Who knows where my life would've gone if I had not made such a tragic decision. I was eight weeks pregnant (approx.) no one told me my baby's heart was beating and there was brain activity. All he needed was time to grow.

* * *

[001287]

AFFIDAVIT

* * *

The State of California

* * *

L.V.

* * *

Tell approximately when and where your abortion occurred: Los Angeles July 22, 1981

* * *

How has your abortion affected you? about 7 years later it hit me like a ton of bricks that I had killed my child & I

considered taking my own life because of it. If it hadn't been for a friend who led me to forgiveness of God & forgiveness from my child & to forgive myself I would not be at peace today. I now encourage expecting moms & dads to not make the same mistake. & to love & receive the gift of life irregardless of the circumstances.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? I would tell her that abortion is never the answer to a problem. To ask for help if she needs it, and if she really doesn't want the baby to give the baby to a family via adoption.

Based on your own experience, what would you tell a court that believes abortion should be legal? That an unborn human being should have the same protection as people already born. There was a time when black people were not considered human & the United States gave protection under the constitution to blacks and ALL living beings, and an unborn child is living. Also the Jews were treated as non-humans in the holocaust & the unborn children are being treated the same way.

* * *

[001294]

AFFIDAVIT

* * *

The State of WI

* * *

Barbara Vlasak

* * *

Tell when and where your abortion occurred: Madison, WI October 1975

* * *

How has your abortion affected you? When I finaly woke up to the reality of what I had done I was very upset & angry with myself. I truly feel like a murderer.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? I would tell her the whole truth. When my daughter got P.J. while still in high school I was able to share with her & she decided to have her baby & give him up for adoption. It was an open adoption & he has a great life!

Based on your own experience, what would you tell a court that believes abortion should be legal? I would tell them how very wrong they are & thousands of women who have gone through abortions would tell them the same thing.

* * *

[001307]

AFFIDAVIT

* * *

The State of Ohio

* * *

Beth Ann Ward

* * *

Tell when and where your abortion occurred: January 27, 1976 – Dayton, Ohio – Abortion Clinic

* * *

How has your abortion affected you? Initially – I became angry and depressed. My Boyfriend Broke up with me. I felt totally alone. Slowly other kids at school found out about my Abortion. I was Ashamed and Embarrassed. I secured counseling for thoughts of suicide and Depression. The Doctor used Hypnosis on me??!! And stated I needed to get in touch with my Female personhood! It took years to overcome the trauma of my abortion.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? I would plead with her not to have an Abortion. The Emotional, Physical and Spiritual consequences are Devastating!!

Based on your own experience, what would you tell a court that believes abortion should be legal? An Abortion Choice Does Not Empower A Woman. Rather An Abortion decision leaves a woman in her own personal prison. Her

prison is filled with pain and sadness and the cries from her unborn child!

* * *

[001322]

AFFIDAVIT

* * *

The State of Texas

* * *

Karen L. Waring

* * *

Tell approximately when and where your abortion occurred: 1981 in San Antonio, Texas

* * *

How has your abortion affected you? Severe depression right after and it has been 20 yrs. since and I am still working through my grief, shame and pain. I don't ever NOT think of the life that was lost. It is undoubtly the worst memory of my entire life.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? Don't do it. Get the facts, consider other options, know that it will profoundly effect you the rest of your life.

Based on your own experience, what would you tell a court that believes abortion should be legal? Abortion is murder. If you aren't willing to stab your own family members to

death how can you allow someone to perpetuate this on someone else. Every life matters, protect them.

* * *

[001324]

AFFIDAVIT

* * *

The State of Florida

* * *

JULIE R. WESLEY

* * *

Tell when and where your abortion occurred: On or about March 1980, College Park, Maryland

* * *

How has your abortion affected you? Right after my abortion a deep feeling of hate and anger towards all who were involved including myself came over me. Then a feeling of separation from my body. One month later I had a nervous breakdown and I had a drug and alcohol abuse which I almost died from and to this day a deep feeling of loss and regret.

* * *

Based on your own experiences, what would you tell a woman thinking of having an abortion? I would tell any woman considering abortion to please not do it. I would tell her my emotional torment. I would also tell her I know women who have never been able to have children because of the damage done because of abortion

Based on your own experience, what would you tell a court that believes abortion should be legal? I would say abortionists know they are taking the life of a baby. In the middle of my abortion the doctor yelled at the nurses these exact words: "How far along is she? This baby is fighting me." I had an abortion because of peer pressure but the consequences for me, the pain and loss I feel, will never go away.

* * *

[001350]

AFFIDAVIT

* * *

The State of Wisconsin

* * *

Terri White

* * *

Tell when and where your abortion occurred: August 1980 in Rockford IL

* * *

How has your abortion affected you? Physically, emotionally, spiritually – I died inside. I am unable to have more children, I have severly abused drugs & alcohol & been sexually active with many men, I have had to stuff my grief & emotions because I could not handle the fact that I killed my daughter.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? That a living, breathing

little life, her son or daughter, grows within her – she is already a mother. That sorrow, regret & grief will haunt her for years. That CPC's exist to help her to look at all the options & educate her on abortion procedures & consequences. That adoption is a beautiful choice too. I would give her the knowledge she needs to make an informed decision – not a reaction to a situation.

Based on your own experience, what would you tell a court that believes abortion should be legal? That even science agrees that a human life is present at conception & therefore we have no more "right" to kill that human being than to a kill a human being outside the womb. That our constitution affords each person the right to life, liberty & happiness. That abortion kills 2 people (at least) always – a baby dies & a mother's spirit dies too. A country that kills its own children cannot survive. There is not enough space here to say all that I would like to say!

* * *

[001355]

AFFIDAVIT

* * *

The State of Kentucky

* * *

Catherine C. Wilson

* * *

Tell approximately when and where your abortion occurred: Age 23 April '81 in Binghamton, NY

* * *

How has your abortion affected you? I have suffered with chronic depression for most of the years following my abortion. I have been suicidal at times. I have hated myself & have had great difficulty in my marriage due to the repressed grief & remorse over taking the life of my baby. I've struggled with horrible nightmares & have had a hard time accepting God's forgiveness. I experienced infertily & have lost a baby to miscarriage. I have been a prisoner in emotional jail.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? I would tell her that she will spend the rest of her life . . . grieving over the baby she would never hold. I would urge her to not make the choice to put herself through the torture that follows this dreadful choice.

Based on your own experience, what would you tell a court that believes abortion should be legal? There is nothing that kills a woman's soul more than the willful choice to destroy one's own baby. Abortion is murder of not just one life, but two. Women who have had abortions suffer in silent emotional & spiritual torture for the rest of their lives.

* * *

[001375]

AFFIDAVIT

* * *

The State of TN

* * *

Konnie S. Woods

* * *

Tell when and where your abortion occurred: Columbus Ohio at Northwest Womens Center in 1982 & 1984

* * *

How has your abortion affected you? I have no children today. I have been happily married for 10 years but I can't have a baby. I have dealt with much regret & sorrow.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? No way. It is a choice you just cannot live with. I show them how much the baby is developing and I let them know the side effects.

Based on your own experience, what would you tell a court that believes abortion should be legal? That there is no way something so horribly impacting on ones life should be legal. There is no way that anyone can understand how bad it is until they have experienced the trama.

* * *

[001389]

AFFIDAVIT

* * *

The State of Michigan

* * *

Mary Ellen York

* * *

Tell approximately when and where your abortion occurred: 1972 New York

* * *

How has your abortion affected you? I was affected dramaticly by my abortion for years I couldn't even look at a baby & when I heard the word abortion I would just cringe. I suffered depression & I didn't like myself very much. Feelings of guilt, I found it very hard to forgive myself. It took my life from me.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? That you will regret it. You might think it's the only answer now. But, it will haunt you for the rest of your life.

Based on your own experience, what would you tell a court that believes abortion should be legal? I don't see how you as a court believe in abortion. A court is about justice & fairness, it is not just or fair to the innocent baby (human being) being aborted. Abortion is murder no matter which way you look at it!

* * *

[001401]

AFFIDAVIT

* * *

The State of Tennessee

* * *

Suzanne Young

* * *

Tell approximately when and where your abortion occurred: January, 1979 – Little Rock, AR

* * *

How has your abortion affected you? Until Jesus came for me on January 17, 1991, I struggled with an inability to maintain close relationships; anger and bitterness towards my mother, my friends, and the world in general. An absolute aborhance for pro-life advocates. I drank a lot of alcohol, smoked a lot of marijuana and had a lot of casual relationships with men. At one point I considered suicide.

* * *

Based on your own experiences, what would you tell a woman considering an abortion? That the consequences are enormous and the emotional pain is unspeakable.

Based on your own experience, what would you tell a court that believes abortion should be legal? Abortion hurts women! The courts are always willing to hand down decisions to protect the general populace except in regards to abortion. This is a procedure that hurts women, kills

babies, destroys relationships. This is an issue of "the greater good." Abortion is not for the "greater good."

* * *

[001403]

APPENDIX

(2)

Supreme Court, U.S.
FILED

No. 06-162 JUL 31 2006

OFFICE OF THE CLERK

In The
Supreme Court of the United States

SANDRA CANO, FORMERLY KNOWN AS "MARY DOE" OF *DOE V. BOLTON*,

Petitioner,

v.

THURBERT E. BAKER, Attorney General of the State of Georgia, PAUL L. HOWARD, JR., District Attorney of Fulton County, Georgia, RICHARD PENNINGTON, Chief of Police of the City of Atlanta,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI VOLUME II, PAGES 176 TO 411

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Sandra Cano, formerly known as MARY DOE,	§	
Plaintiff,	§	
V.	§	**CIVIL ACTION NO. 13676**
ARTHUR BOLTON, Attorney General of the State of Georgia Through His Official Successor in Office, THURBERT E. BAKER; LEWIS R. SLATON, as District Attorney of Fulton County, Georgia Through His Official Successor in Office, PAUL L. HOWARD, JR.; And HERBERT T. JENKINS, as Chief Of Police of the City of Atlanta Through His Official Successor in Office, RICHARD PENNINGTON,	§	
Defendants.	§	

RULE 60 MOTION FOR RELIEF FROM JUDGMENT

(Filed Aug. 25, 2003)

TO THE HONORABLE COURT:

NOW COMES, SANDRA CANO, formerly known in this Court as Mary Doe, the Plaintiff herein (hereinafter referred to as "Plaintiff"), and would respectfully show this Honorable Court the following:

1. Pursuant to Federal Rules of Civil Procedure, Rule 60(b)(5) and (6), Plaintiff files this Rule 60 Motion For Relief From Judgment. Plaintiff hereby seeks the relief of vacating this Court's previous judgment in favor of Plaintiff in this cause on the grounds it is no longer just or equitable to give it prospective application.

FACTUAL HISTORY AND PROCEDURAL BACKGROUND

2. On April 16, 1970, Plaintiff Sandra Cano, then known to this Court as "Mary Doe," originally brought this action seeking a declaratory judgment that the Georgia abortion statute, Ga. Code §§ 26-1201-03 *et. seq.*, was unconstitutional and seeking injunctive relief against its enforcement. By opinion dated July 31, 1970, the judgment of a three-judge court as amended on October 13, 1970 was issued and declared that the portions of the Georgia abortion law allowing abortion only for the impairment of health of the woman, rape, or fetus malformation was unconstitutional.[1] On August 25, 1970, the judgment was filed and entered that the complaint of all parties except Mary Doe be dismissed and that certain sections of the Georgia Abortion Statute was void on its face for unconstitutional overbreadth. On January 22, 1973, the United States Supreme Court affirmed this Court's judgment.[2] On the same day, the United States

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[1] Doe v. Bolton, 319 F. Supp. 1048 N.D. (Ga. 1970) (hereinafter "*District Court Doe*").

[2] 410 U.S. 179 (1973) (hereinafter "*Doe*").

Supreme Court also ruled in a companion case to *Doe, Roe v. Wade*.[3]

3. The existing and prospective application of this Court's judgment and its subsequent affirmation by the United States Supreme Court prevent the State of Georgia from enforcing or enacting laws protecting women and children by prohibiting abortion.

PARTIES

4. Plaintiff Sandra Cano, formerly known in this Court as "Mary Doe," is the original Plaintiff herein, and an original party hereto.

5. Defendant, Arthur Bolton, is represented in this cause by and through his official successor in office, Thurbert E. Baker, Attorney General of the State of Georgia. Defendant Lewis R. Slaton is represented in this cause by and through his official successor in office, Paul L. Howard, Jr., District Attorney of Fulton County, Georgia. Defendant Herbert T. Jenkins is represented in this cause by and through his official successor in office, Richard Pennington, Chief of Police of the City of Atlanta.

6. This Court determined that all the plaintiffs had standing but only Mary Doe had a justiciable controversy.[4] Therefore, this Court granted a motion to dismiss to that extent all other plaintiffs except Mary Doe.[5] A John and Mary Doe filed a companion complaint in *Roe v. Wade,*

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[3] Roe v. Wade, 410 U.S. 113 (1973) (hereinafter "*Roe*").

[4] Doe v. Bolton, 319 F. Supp. 1048, 1053 (N.D. Ga. 1970).

[5] *Id.* at 1054. Therefore, they are no longer parties and have not been served.

cause no. 3-3691-C, and the two actions were consolidated and heard together.[6] Dr. Hallford and the Does were held not to have standing by the United States Supreme Court.[7]

REQUEST FOR THREE-JUDGE COURT

7. Plaintiff requests that this Motion be heard and determined by a three-judge court in accordance with 28 U.S.C. §§ 2281 and 2284. A three-judge court originally heard this cause of action in 1970 in accordance with 28 U.S.C. § 2281 which provided for a three-judge court for cases involving injunctions against enforcement of State statutes. Although 28 U.S.C. § 2281 was repealed by amendments to 28 U.S.C. § 2284, the repeal "shall not apply to any action commenced on or before the date of enactment [enacted Aug. 12, 1976]". 28 U.S.C. § 2284. This cause commenced before the date of enactment and involves an original cause of action seeking an injunction against the enforcement of a State statute. Furthermore, 28 U.S.C. § 2284 provides that when a three-judge court is required under federal statute "[a] single judge shall not . . . hear and determine any application for a preliminary or permanent injunction or motion to vacate such an injunction, or enter judgment on the merits." This Motion, pursuant to Fed. R. Civ. P. 60(b), is seeking a final determination on the merits to vacate the court's judgment, and accordingly, the three-judge court should be re-convened to hear this Motion.

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[6] 410 U.S. at 121-22.

[7] 410 U.S. at 125-28.

REQUEST FOR EVIDENTIARY HEARING AND ORAL ARGUMENT

8. There has been a significant change in both the factual and legal landscape surrounding this cause of action since the three-judge court's original ruling in this case. Plaintiff Sandra Cano is alleging both (1) significant changes in factual conditions and (2) significant changes in law which make it no longer just to continue the prospective application of *Doe*. With respect to the factual allegations, there must be a factual determination made, an opportunity for the presentation of evidence, and the development of a full record. A thorough hearing and development of an adequate fact-finding record is necessary for the Court and, in the event of an appeal, the appellate courts, to make fully informed, intelligent and well-reasoned decisions. Appellate courts do not conduct their own fact-finding hearings – they rely upon the lower courts to develop a proper record.

9. When considering a motion pursuant to Fed. R. Civ. P. 60(b), the "threshold issue" is whether the factual landscape has changed since the court's previous decision.[8] The trial court should decide factual matters. The decisions of the Supreme Court in *Doe v. Bolton* and *Roe v. Wade* are obviously of tremendous national concern and importance. They remain as controversial today and open to criticism as they were when decided thirty years ago.[9]

---

[8] Agostini v. Felton, 521 U.S. 203 (1997) (hereinafter "*Agostini*").

[9] As Justice Sandra Day O'Connor surmised: "Abortion is still hotly debated in all political arenas. No one, it seems, considers the Supreme Court decision in *Roe v. Wade* to have settled the issue for all time. Such intense debate by citizens is as it should be. A nation that docilely and unthinkingly approved every Supreme Court decision as infallible

(Continued on following page)

The importance of these cases and the issues raised in Plaintiffs' Motion for Relief From Judgment warrant a full and complete factual exposition of changed factual circumstances. Accordingly, pursuant to the Federal Rules of Civil Procedure, Plaintiff hereby requests an evidentiary hearing and oral argument before the three-judge court to present the evidence and legal authorities now available to the Court.

RULE 60 PROCEDURE PRESCRIBED BY THE SUPREME COURT

10. Federal Rule of Civil Procedure 60(b)(5) and (6) provide:

> "(b) On motion and upon such terms as are *just*, the court may relieve a party or a party's legal representative from a final judgment, order or proceeding for the following reasons: . . . (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is *no longer equitable* that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment." [Emphasis added.]

11. The primary United States Supreme Court opinion which determines the proper legal standard for a court to follow when considering a motion to vacate a Supreme Court opinion pursuant to Fed. R. Civ. P. 60(b) is *Agostini v. Felton*.[10] In *Agostini*, twelve years after the

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and immutable would, I believe have severely disappointed our founders." Sandra Day O'Connor, THE MAJESTY OF THE LAW 45 (2003).

[10] 521 U.S. 203 (1997).

Supreme Court held in *Aguilar v. Felton*[11] that the Establishment Clause barred the New York City Board of Education from sending public school teachers into parochial schools, the Board and parochial school children's parents filed a motion under Fed. R. Civ. P. 60(b)(5) seeking relief from the judgment entered by the Court in 1985. The Court found that a motion pursuant to Fed. R. Civ. P. 60(b) was procedurally sound and the appropriate vehicle for the parties to seek relief from a prior ruling of the Court.[12] The Court also found that the doctrines of *stare decisis* and the law of the case " . . . do(es) not preclude us from recognizing the change in our law and overruling *Aguilar* and those portions of *Ball* inconsistent with our more recent decisions."[13] "The doctrine does not apply if the court is 'convinced that [its prior decision] is clearly erroneous and would work a manifest injustice.' "[14]

12. In *Agostini,* the Court not only found that it had jurisdiction and authority to overrule its prior ruling in the same case when considering a Fed. R. Civ. P. 60(b) motion, the Court also found that it had the authority to overrule a companion case to the current case at bar.[15] Similarly, Plaintiff hereby requests that the Court not only overrule the prior decision in *Doe,* but also overrule the decision in the companion case hereto, *Roe.* Further, the evidence as presented herein and as Plaintiff will present at the evidentiary hearing and oral argument as requested

---

[11] 473 U.S. 402 (1985).

[12] 521 U.S. at 214.

[13] Agostini v. Felton, 521 U.S. 203 (1997); School District of Grand Rapids v. Ball, 473 U.S. 373 (1985) (the companion case to *Agostini*).

[14] 521 U.S. at 236.

[15] *See* Agostini v. Felton, 521 U.S. 203 (1997).

herein will show that the prior decision of the Court is clearly erroneous and would work a manifest injustice if applied prospectively. Accordingly, under both Fed. R. Civ. P. 60(b) and *Agostini,* Plaintiff hereby requests that the prior ruling of the Court in this cause be vacated.

13. When considering a Fed. R. Civ. P. 60(b) motion, the Court determined in *Agostini* that the threshold issue to be decided is "whether the factual or legal landscape has changed since . . . [the prior ruling of the Court]."[16] In *Rufo v. Inmates of Suffolk County Jail,*[17] the Supreme Court held that it is appropriate to grant a Fed. R. Civ. P. 60(b) motion when the parties seeking relief can show, "a significant change *either* in factual conditions or in law. 'A Court may recognize subsequent changes in either statutory or decisional law.' " "The Court cannot be required to disregard significant changes in law *or* facts if it is satisfied that what it has been doing has been turned through changed circumstances into an instrument of wrong."[18] Either a change in law or factual circumstances is sufficient by itself.[19] Both need not be proven. There have been significant changes in both factual circumstances and law since the prior ruling of the Court in *Doe.* New factual and legal evidence since the Court's decision in *Doe* and its companion case, *Roe,* as presented herein, in the Memorandum of Law in Support of this Motion (incorporated herein by reference), and as will be presented to the Court at the evidentiary hearing requested by Plaintiff, now establishes that *Doe* and *Roe* have become an "instrument

---

[16] *Id.* at 216.

[17] 502 U.S. 367, 384 (1992) (emphasis added).

[18] Railway Employees v. Wright, 364 U.S. 642, 647 (1961).

[19] Agostini, 521 U.S. at 214.

of wrong".[20] Accordingly, under Fed. R. Civ. P. 60(b) and current United States Supreme Court case law as cited herein, it is no longer just or equitable to give the *Doe* and *Roe* decisions prospective application.

JUSTICIABILITY AND JURISDICTION

14. Procedural requirements generally – At the time this case, *Doe v. Bolton*, was originally decided, all of the procedural requirements for jurisdiction had been met. This Rule 60 Motion merely seeks to re-examine the justice of continuing application to women of the decision in light of the substantial changes in the factual and legal conditions that have occurred since 1973. No independent jurisdiction is needed to support a Rule 60(b) Motion because the three judge court has continuing jurisdiction. The Rule 60 Motion "is not considered an independent claim and the district court has continuing jurisdiction," and therefore, the Plaintiff should be heard.[21]

15. Standing – By the plain language of Rule 60(b),[22] Plaintiff has standing to bring this Motion because she was a party to the "final judgment, order, or proceeding . . . "[23] The courts have followed this plain reading of the Rule.[24]

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[20] *See* Railway Employees v. Wright, 364 U.S. 642 (1961).

[21] Charter Township of Muskegon v. City of Muskegon, 303 F.3d 755, 763 (6th Cir. 2002) (reconsidering the Rule 60 Motion in light of justice even 28 years after the original judgment).

[22] Rule 60 states: "On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding . . . "

[23] FRCP 60(b).

[24] *See* National Acceptance Co. v. Frigidmeats, 627 F.2d 764, 766 (7th Cir. 1980). *See generally* 11 Charles Alan Wright, Arthur R. Miller,

(Continued on following page)

Furthermore, it is well established that no independent federal jurisdictional basis is needed to support a Rule 60(b) Motion because the district court has continuing jurisdiction.[25] In essence, there is no question that Sandra Cano was and is a party and has standing to bring this Rule 60 Motion. If the State of Georgia were seeking to set aside the judgment, there is no question that Sandra Cano could protect the judgment as a party.

16. Mootness – The United States Supreme Court specifically addressed this issue in *Roe v. Wade.*[26] In *Roe v. Wade,* the appellee argued that Roe's case was moot because she and all other members of the class were no longer pregnant.[27] The Court rejected this argument stating that "pregnancy provides a classic justification for a conclusion of nonmootness."[28] Plaintiff's case was not moot in 1973 and it is not today. The judgment is continuing with the continuing harmful daily effects on women and children as demonstrated in the attached 5,565 pages of Affidavits.

17. Judicial estoppel – The doctrine of judicial estoppel prohibits a party from assuming a contrary position merely because his interests have changed and

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et al. FEDERAL PRACTICE AND PROCEDURE "Jurisdiction" § 2865 at 225-26 (West 1973) (stating it is well settled that one who was not a party lacks standing to bring a Rule 60(b) motion).

[25] Charter Township of Muskegon v. City of Muskegon, 303 F.3d 755, 762 (6th Cir. 2002) (*citing* Moore's FEDERAL PRACTICE § 60.84[1][a] (3d ed. 1997)).

[26] Roe v. Wade, 410 U.S. 113, 124 (1973).

[27] *Id.*

[28] *Id.* at 125.

especially if it prejudices another party.[29] The doctrine exists to protect the court against fraud and abuse and is discretionary in nature.[30] Plaintiff is not using inconsistent arguments to gain advantage in litigation. On the contrary, she is using the Rule 60 Motion to bring before the court changes of factual and legal conditions that were unavailable when the case was originally litigated. Plaintiff is acting in good faith. In addition, there is no prejudice to another party. In a Rule 60 Motion, the change in factual and legal conditions should be the primary concern and not the position of the parties.[31]

18. *Stare Decisis* and law of the case doctrines – the United States Supreme Court specifically addressed the issue of *stare decisis* in *Agostini v. Felton*,[32] the only case dealing with overturning prior Supreme Court rulings directly by Rule 60. It stated that "The *stare decisis* doctrine does not preclude this Court from recognizing the change in its law . . . "[33] the Court went on to state that "*stare decisis* does not prevent us from overruling a previous decision where there has been significant change in or subsequent development of our constitutional law."[34] Nor

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[29] New Hampshire v. Maine, 532 U.S. 742, 749 (2001).

[30] 18 Moore's FEDERAL PRACTICE § 134.34 (*citing* New Hampshire v. Maine, 532 U.S. 742 (2001)).

[31] Railway Employees v. Wright, 364 U.S. 642 (1961). The Supreme Court said the change in law was the important fact which should guide the court, not the parties' position on the issue which has now changed. *Id.* at 651-52. Parties who have agreed to judgments frequently go back to court to have them changed in light of changed circumstances such as the *Wright* case and others noted in footnote 43.

[32] Agostini v. Felton, 521 U.S. 203 (1997).

[33] *Id.* at 235.

[34] *Id.* at 235-36.

does the "law of the case" doctrine apply where "adherence to that decision would undoubtedly work a 'manifest injustice'."[35]

REASONABLE TIME

19. This Rule 60 Motion is based on changes in factual conditions and/or legal conditions which make a judgment, that may have once been just at the time the decision was entered, no longer just due to these changed factual and legal conditions.[36] In such a case, the Motion should not be filed until the factual and/or legal conditions have changed to such a degree that "adherence to that decision would undoubtedly work a 'manifest injustice'."[37] The Court should temper finality with justice,[38] and a litigant should not be penalized for waiting for factual and legal conditions to be changed so substantially that they would meet the weighty standard in Rule 60 that it is no longer "equitable that the judgment should have prospective application."[39] "Because Rule 60(b) is remedial, discretion of the district court to deny a Rule 60(b) motion is limited by significant policy considerations."[40] The

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[35] *Id.* at 236.

[36] *See* Agostini v. Felton, 521 U.S. 203, 215 (1997).

[37] *Id.* at 236.

[38] Stipelcovich v. Sand Dollar Marine, 805 F.2d 599 (5th Cir. 1986). The court stated: "The rule attempts to strike a balance between two conflicting goals, the finality of judgments and the command of the court to do justice. Thus, 'although the desideratum of finality is an important goal, the justice-function of the courts demands that it must yield, in appropriate circumstances, to the equities of the particular case in order that the judgment might reflect the true merits of the cause.'" *Id.* at 604 (citations omitted).

[39] FRCP Rule 60.

[40] In re Roxford Foods, Inc., 12 F.3d 875, 881 (9th Cir. 1993).

reasoning is that the court's power in a Rule 60 Motion has been defined as a "grand reservoir of equitable power to do justice in a particular case."[41] To this end, the Rule 60 Motion should be "construed liberally to do substantial justice."[42]

20. The United States Supreme Court has rejected the mere passage of time as the standard when there have been significant changes in factual or legal conditions.[43] "The court cannot be required to disregard significant changes in law or fact if it is satisfied that what it has

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[41] Woods v. Kenan, 173 F.3d 770, 780 (10th Cir.), *cert. denied,* 528 U.S. 878 (1999); Pierce v. Cook & Co., Inc., 518 F.2d 720 (10th Cir. 1975), *cert. denied,* 423 U.S. 1079 (1976).

[42] Fackelman v. Bell, 564 F.2d 734, 735 (5th Cir. 1977).

[43] Both the United States Supreme Court and lower federal courts have allowed cases due to the changing factual and legal conditions that would justify a Rule 60 Motion. *See, e.g.,* Agostini v. Felton, 521 U.S. 203 (1997) (12 years); United States v. Board of School Commissioners, 128 F.3d 507 (7th Cir. 1997) (18 years); Rufo Inmates of the Suffolk County Jail, 502 U.S. 367 (1992) (10 years); Railway Employees v. Wright, 364 U.S. 642 (1961) (12 years); Charter Township of Muskegon v. City of Muskegon, 303 F.3d 755 (6th Cr. 2002) (28 years); Alliance to end Repression v. City of Chicago, 237 F.3d 799 (7th Cir. 2001) (20 years); United States v. Karahalias, 205 F.2d 331 (2d Cir. 1953) (17 years); Federal Deposit Ins. Corp. v. Castle, 781 F.2d 1101 (5th Cir. 1986) (2 years); Ruiz v. Johnson, 154 F. Supp. 2d 975 (S.D. Tex. 2001) (20 years); United States v. Columbia Artists Mg., 662 F. Supp. 865 (S.D.N.Y. 1987) (32 years). In desegregation cases, the federal courts have also granted relief from decrees issued decades earlier due to changes in social and factual conditions. *See, e.g.,* Belk v. Charlotte-Mecklenburg Board of Education, 269 F.3d 305 (4th Cir. 2001) (30 years); People Who Care v. Rockford Board of Education, 246 F.3d 1073 (7th Cir. 2001) (28 years); Manning v. School Board of Hillsborough, 244 F.3d 927 (11th Cir. 2001) (30 years); NAACP v. Duval County School, 273 F.3d 960 (11th Cir. 2001) (41 years); United States v. Texas, 158 F.3d 299 (5th Cir. 1998) (27 years); Lee v. Butler County Board of Education, 183 F. Supp. 2d 1359 (M.D. Ala. 2002) (39 years).

been doing has been turned through changed circumstances into an instrument of wrong."[44] In fact, a "court errs when it refuses to modify an injunction or consent decree in light of such changes."[45] Therefore, lapse of time is not determinative,[46] but the court must make a flexible application depending on the facts of each case.[47] The Eleventh Circuit has ruled that forty-one years and thirty years are not too long when justice is at stake.[48]

21. The Motion must be brought within a "'reasonable time' . . . which depends upon the particular facts and circumstances of the case."[49] Thus, the court cannot apply a strict time limitation because the "particular facts and circumstances" of each case will be different, thereby requiring an analysis of when those facts and circumstances

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[44] Agostini v. Felton, 521 U.S. 203, 215 (1997) (*quoting* Railway Employees v. Wright, 364 U.S. 642, 647 (1961)).

[45] *Id.*

[46] Margoles v. Johns, 798 F.2d 1069, 1073 (7th Cir. 1986) (stating the lapse of specific period of time between entry of judgment and ruling of the motion for relief is not determinative but depends on the circumstances), *cert. denied*, 482 U.S. 905 (1987).

[47] Lairsey v. Advance Abrasives Co., 542 F.2d 928, 931 (5th Cir. 1976) (stating reasonable time by its nature invites flexible application depending upon the facts in each case).

[48] NAACP v. Duval County School, 273 F.3d 960 (11th Cir. 2001) (granting relief from decree issued forty-one years ago due to changes in social and factual conditions in desegregation case); Manning v. School Board of Hillsborogh, 244 F.3d 927 (11th Cir. 2001) (granting relief from decree issue thirty years ago).

[49] Traveler's Ins. Co. v. Liljeberg Enterprises, Inc., 38 F.3d 1404, 1410 (5th Cir. 1994); Margoles v. Johns, 798 F.2d 1069, 1073 (7th Cir. 1986), *cert. denied*, 482 U.S. 905 (1987); Lairsey v. Advance Abrasives Co., 542 F.2d 928, 932 (5th Cir. 1976); In re Pacific Far East Lines, Inc., 889 F.2d 242 (9th Cir. 1989).

changed. The appellate courts have criticized lower courts for failing to hold hearings and carefully consider each motion on its merits.[50]

22. In her Motion and Memorandum of Law in Support, Plaintiff explains valid reasons for the length of time.[51] Her entire Motion is based on the assertion of

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[50] For example, the Court of Appeals for the Firth Circuit recently admonished lower courts within the circuit stating:

> We notice that the district judge in this matter, like some other district judges in this circuit, has the custom of usually, or even always, prohibiting litigants from filing motions for reconsideration or relief, such as those contemplated by FED. R. CIV. P. 59 and 60. No judge has that authority.
>
> Accordingly, we direct the judge in this case and others in this circuit, to entertain post-judgment motions as contemplated by the rules. Moreover, the districts must *carefully consider* each such motion *on its merits*, without begrudging any party who wishes to avail himself of the opportunity to present such motions in accordance with the rules of procedure and with the standards of professional conduct.

Collins v. Morgan Stanley Dean Witter, 224 F.3d 496, 502 (5th Cir. 2000) (emphasis added).

[51] The following is evidence from Plaintiff's Memorandum of Law in Support and this Motion attesting as to why it would not have been reasonable to file this motion sooner and not unreasonable now:

> Changes in Factual Conditions:
>
> (a) Since 1973, there has been an explosion of relevant scientific and medical knowledge on the humanity of the child. Motion, page 24-25, paragraph 30. Memorandum of Law, pages 8.
>
> (b) New knowledge reveals that the abortion industry does not adequately protect women, nor provide women with the protections of a true doctor-patient relationship. Motion, page 25-26, paragraph 31. Memorandum of Law, pages 18-25.

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changed factual and legal circumstances which necessarily implies the passage of time. It was not until very recently that the state of man's knowledge evolved to establish the humanity of the child,[52] and therefore, it would be an

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(c) New factual conditions now exist to show the physical and mental consequences of abortion on women. Motion, pages 26-29, paragraphs 32-34. Memorandum of Law, pages 6-18.

(d) New factual conditions have been revealed regarding the decision made in *Doe v. Bolton,* the companion case to *Roe,* showing that severe fraud was committed on the court in that case. Motion pages 29, paragraph 35. Memorandum of Law, pages 36.

Changes in Legal Conditions:

(a) Since its original ruling in *Doe* and *Roe,* the Supreme Court has significantly undermined the legitimacy of these decisions through its decisions in *Webster v. Reproductive Services, Planned Parenthood v. Casey,* and *Washington v. Glucksberg.* Motion, page 21, 30-33, paragraph 25. 37-40. Memorandum of Law, pages 28-42.

(b) Recent changes in the law of federalism would now justify returning the decision whether or not to allow abortion to the individual states. Motion, pages 33-35, paragraphs 41-42. Memorandum of Law, pages 42-44.

(c) The overwhelming majority of states now permit some form of legal recovery for the loss of a child in the womb. Motion, page 35-37, paragraph 43. Memorandum of Law, pages 45-48, 53-54.

(d) Under recently enacted "Baby Moses" laws, women in 40 states including Georgia may be relieved from the burdens of motherhood since the state will assume the responsibility of raising the child. Motion, page 37-38, paragraph 44. Memorandum of Law, pages 49-53.

[52] The United States Supreme Court stated in *Roe* that it was unable "to arrive at any consensus . . . in the development of man's knowledge . . . " Roe v. Wade, 510 U.S. 113, 181 (1973). There has been a gradual development of scientific knowledge coupled with the gradual implementation of new law which makes this an extraordinary piece of

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abuse of discretion to deny a hearing on this Motion.[53] Furthermore, Plaintiff had to wait until the law had significantly, changed to justify an attempt to overturn the 1973 judgment.[54] For example, Georgia did not adopt its "Safe Place for Newborns Act of 2002," until 2002 thus shifting the burden of "unwanted" children from the mother to society.[55] To "manifest injustice" means to become clear and obvious, not a vague or shadowy showing. After it became clear and manifest, Plaintiff required time to gather such evidence to meet the threshold condition of Rule 60(b).[56]

23. In addition, Plaintiff details the changes in both the factual and legal conditions that have occurred. These changes have occurred as recently as 2003. For example, one factual condition that has changed since 1973 is the whole state of man's scientific knowledge regarding the

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litigation. Furthermore, neither Plaintiff nor the court can ascertain a precise moment when the factual and legal conditions changed so dramatically as to make *Roe* manifestly unjust.

[53] Clark v. Burkle, 570 F.2d 824, 832 (8th Cir. 1978) (denying hearing is abuse of discretion and noting that "this is not an ordinary run of the mill piece of litigation").

[54] *See* Agostini v. Felton, 521 U.S. 203, 212 (1997) (waiting twelve years to bring Rule 60 motion because it took that long for the evolving changes in law to become apparent); Railway Employees v. Wright, 364 U.S. 692 (1961) (allowing parties who had agreed to a judgment to wait six years after Congress changed the law; here Plaintiff has filed her motion within one year of the Georgia law).

[55] Ga. Code § 19-10A-1 *et. seq.* (2002).

[56] Marderosian v. Shamshak, 170 F.R.D. 335, 338 (D. Mass. 1997) (holding that Rule 60(b) is "a vehicle for 'extraordinary relief' " and that moving party "must give the trial court reason to believe that vacating the judgment will not be an empty exercise"). *See* attached Affidavit of Allan Parker on the difficulty of gathering evidence, Appendix to the Motion, Tab I, pp. 5547-5556.

humanity of the child. The humanity of the child was unknown in 1973 as even the United States Supreme Court recognized in *Roe*.[57] This factual condition has not become clearly known until quite recently with advances in scientific knowledge,[58] but neither Plaintiff nor the court can really say with exact certainty when that point in man's knowledge was crossed. The change in factual conditions has been an evolving process with an explosion of medical and scientific knowledge as well as advances in technology in recent years. Such knowledge and advances are discussed in Plaintiff's Motion and Supporting Memorandum of Law and will be presented at an evidentiary hearing. Furthermore, this case is totally unlike the typical tort or fraud case where some bit of knowledge about the fraud or some other easily established fact becomes known at some exact point in time, and then the litigant must act promptly. As the United States Supreme Court recognized in its most recent decision on the issue, the humanity of the child was at that time still a matter of some controversy with irreconcilable points of view.[59] Many

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[57] The Court stated: "We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer." *Roe v. Wade*, 410 U.S. 113, 181 (1973). Furthermore, it was not until 2002 that the first court in the nation acknowledged that the humanity of the child is a question of fact. Acura v. Turkish, 354 N.J. Super. 500, 808 A.2d 149 (2002).

[58] *See* Appendix to this Motion, Tab H, pp. 5396-5546.

[59] Stenberg v. Carhart, 530 U.S. 914, 920-21 (2000) (stating "Millions of Americans believe that life begins at conception and consequently that an abortion is akin to causing the death of an innocent child; they recoil at the thought of a law that would permit it. Other millions fear that a law that forbids abortion would condemn many American women to lives that lack dignity, depriving them of

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may still dispute the point Plaintiff is making. Plaintiff has not waited until there was absolute consensus on the point, but only until she could prove to the court with a substantial development of medical and scientific knowledge that the decision in her case has become manifestly unjust.[60] To do otherwise would be merely a matter of Plaintiff's speculation and opinion and not medical and scientific knowledge that the court should consider. Plaintiff's personal opinions and speculation are not controlling in the Rule 60 Motion; only the changes in the factual and legal conditions that make the judgment no longer equitable in prospective application are controlling.

24. Other changes in the factual conditions include the real life experiences of the women who have had abortions. At the time of *Roe* and *Doe,* the United States Supreme Court could only make assumptions as to the effect of abortion on women or whether there would be a normal doctor-patient relationship between the woman and the abortionist. Now, the court can read the sworn statements of the physical, emotional, and psychological harm that occur to women who have abortions.[61] As the Affidavits to the Motion and Supporting Memorandum of Law attest, the women have not been able to deal with the

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equal liberty and leading those with least resources to undergo illegal abortions with the attendant risks of death and suffering . . . these irreconcilable points of view . . . ").

[60] In *Carhart,* the United States Supreme Court discussed the "significant medical authority supports the proposition . . . " Stenberg v. Carhart, 530 U.S. 914, 932 (2000).

[61] *See* Affidavits by the over 1,000 post abortive women at Tab B of this Original Motion.

psychological issues for decades after the abortion.[62] Medical knowledge is now able to confirm what the women have experienced – that women cannot deal with these traumatic circumstances until years later.[63] Therefore, it has taken time to deal with their circumstances and to be able to testify as to the effects of abortion. In light of these factual circumstances, Plaintiff's Motion is made within a reasonable amount of time.

25. In addition to the changes in factual conditions, there have been significant legal changes that justify Plaintiff's Rule 60 Motion. As discussed in Plaintiff's Supporting Memorandum of Law which is incorporated herein, the United States Supreme Court has, over time, continued to restrict and undermine the legitimacy of *Roe v. Wade* and *Doe v. Bolton.* These cases have included, but are not limited to, *Webster v. Reproductive Services,*[64] *Planned Parenthood v. Casey,*[65] and *Washington v. Glucksberg.*[66] Even in its most recent ruling, the United States Supreme Court has recognized that " . . . this Court, in the course of a generation, has determined and then redetermined" what the basic constitutional protections are in the

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[62] *See* Affidavit of Dr. Burke in Support of this Motion, Appendix, Tab D and Affidavit of Dr. Reardon in Support of this Motion, Appendix, Tab E.

[63] *See* Affidavit of Dr. Reardon at Tab J, pp. 5557-5562 and Affidavit of Dr. Burke at Tab K, pp. 5563-5565. The Affidavit of Dr. Burke explains that it can take women decades to recognize their grief, seek healing, and then overcome political and social stigmas in order to be able to speak out about the pain they have suffered from aborting a child. *See also* Affidavit of Allan Parker, Tab I, pp. 5547-5556.

[64] 492 U.S. 490 (1989).

[65] 505 U.S. 833 (1992).

[66] 521 U.S. 702 (1997).

area of abortion and how they should be applied in particular circumstances.[67] If the Court is constantly readjusting the boundaries of *Roe* and *Doe*, Plaintiff should be free to seek justice now.

26. Similarly, in recent years, there have been significant changes in the law of federalism. Plaintiff's Supporting Memorandum of Law discusses this issue in detail. However, it is sufficient to say at this juncture that significant changes were made since 1995.[68] During this period, commentators across the country have been split on such issues as whether the United States Supreme Court was serious about expanding federalism, how it would be impacted by the fragile 5-4 split on the Court, what the parameters would be.[69]

27. In addition to changes in the decisional law, there have been significant changes in statutory law. Most notably are the statutory provisions that allow a mother to drop off an unwanted child with no threat of criminal prosecution.[70] In 2003, at least forty states now have such provisions. This is a national legal change that gives women alternatives to abortion that were not available until just recently. In the majority of states, this was not

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[67] Stenberg v. Carhart, 530 U.S. 914, 920 (2000).

[68] *See, e.g.*, United States v. Lopez, 514 U.S. 549 (1995); United States v. Morrison, 529 U.S. 598 (2000); Board of Trustees of the University of Alabama v. Garrett, 531 U.S. 356 (2001).

[69] *See generally*, J. Harvie Wilkinson III, *The 2000 Justice Lester W. Roth Lecture: Federalism for the Future*, 74 S. CAL. L. REV. 523, 539-40 (2001) (stating the balance between national and state authority is "one of the new century's defining domestic struggles" and the answers are "neither absolute nor simple.").

[70] *See* Plaintiff's Original Rule 60 Motion at fns 119-122 discussing these statutes.

available until 2001.[71] Georgia did not pass its law until 2002.[72] For all the above reasons, Plaintiff contends this Motion is brought within a reasonable time in light of the substantially changed factual and legal conditions.

CHANGES IN THE FACTUAL CONDITIONS

28. In addition to the significant changes in decisional and statutory law since the original ruling of the Court in this cause, there have also been dramatic changes in factual circumstances and available scientific knowledge. Just as *Brown v. Board of Education*[73] overturned *Plessy v. Ferguson*[74] because subsequent facts showed that the doctrine of "separate but equal" had become inherently unjust, the new factual conditions revealed in this Motion demonstrate that *Doe* is no longer just. In the Memorandum of Law in Support of this Motion and at the evidentiary hearing requested herein, the new factual conditions will be revealed in full detail. They demonstrate that *Doe* is no longer just, but inherently unjust, and provide the decisional basis for the Court to vacate its previous ruling in this cause.

29. At the time of the *Doe* decision, the United States Supreme Court stated in *Roe* that scientific, philosophical, and religious reasoning had not been able to determine when human life begins. The Court stated:

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[71] There was one state in 1999; 13 more in 2000; 18 more in 2001; 7 more in 2002; and 1 more so far in 2003.

[72] Ga. Code § 19-10A-1 *et. seq.* (2002).

[73] 247 U.S. 483 (1954).

[74] 163 U.S. 537 (1896).

> We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer.[75]

In previous decisions, the Court has treated the question of when human life begins as a matter of opinion, belief, or a point of view because it has never been presented with clear and compelling scientific evidence which allows the matter to be resolved objectively rather than through opinion. New scientific and medical evidence and advances in technology since 1973, as described herein and as will be more thoroughly presented at the evidentiary hearing requested in this cause, clearly demonstrate that human life begins at conception, and therefore, the previous ruling in this cause should be vacated as it would be unjust to have prospective application.[76]

30. An explosion of medical and scientific knowledge regarding the humanity of the unborn child has occurred since the Court's original ruling in *Doe*. Advances in ultrasound technology now make it possible to see even the eyebrows and eyelashes of unborn children. It is now possible to successfully perform in-utero surgery on an unborn child at very early stages of pregnancy. The viability date of unborn children has continued to advance year after year. Improvements in neo-natal medical technology now make it possible for dramatically premature infants

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[75] Roe v. Wade, 410 U.S. 113, 181 (1973).

[76] *See* Scientific and Medical Analysis attached hereto in Appendix, Tab H, pp. 5396-5546; *see also* Agostini v. Felton, 521 U.S. 203 (1997).

to live when just a few years ago they would not have survived. When considering a mother and her unborn child, the fact that the Court is dealing with two persons can be very clearly and solidly proven. DNA technology, previously unavailable to the Court, can remove any doubt in this regard. If a DNA sample from the mother's arm and one from her child in the womb are sent anonymously to a DNA testing lab for identification, the lab will report that two separate humans are reflected in the samples. If samples from the mother's arm and leg, parts of her "own body" were sent, testing would show only one person is involved, the same person.

31. In addition, the United States Supreme Court in *Roe* made a non-evidence based assumption that an idealized or even normal doctor-patient relationship would exist between a woman seeking an abortion and the abortionists.[77] That assumption is belied by the actual practices of the abortion industry since 1973. The real life experiences of the women that have had abortions and the individuals that have worked in abortion clinics since 1973 now show that the abortion industry does not adequately protect women.[78] The Affidavits attached hereto, the

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[77] Roe v. Wade, 410 U.S. 113, 166 (1973).

[78] *See* Affidavit of Plaintiff Norma McCorvey, who worked in abortion clinics, Tab C, pp. 1706-1719; *see also* the Affidavits of more than one thousand Post-Abortive Women (hereinafter the "Women's Affidavits"), attached hereto in the Appendix, Tab B, pp. 12-1705; the Affidavit of Theresa Burke, Ph.D., attached hereto in the Appendix, Tab D, pp. 1720-1973; the Affidavit of David Reardon, Ph.D., attached hereto in the Appendix, Tab E, pp. 1974-2108, Exhibits to Affidavit of David Reardon, Ph.D., Appendix Tab E, pp. 2108-4515; the Client Intake Records for Pregnancy Care Centers, attached hereto in the Appendix, Tab F, pp. 4516-5388; the Affidavit of Carol Everett, former

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Memorandum of Law in Support of this Motion, and the testimony to be presented at the evidentiary hearing requested herein reveal new factual evidence that the abortion industry does not provide women with the protections of a true doctor-patient relationship, fails to provide women with the information necessary to truly make an informed decision regarding the procedure, fails to maintain the normal standards of health, safety, and professionalism required of medical personnel, regularly misleads or deceives women regarding the nature and development of their unborn children, and generally fails to adequately protect the mental and physical safety of women.[79]

32. New factual evidence regarding the physical and mental consequences of abortion on women, the result of more than thirty years of legalized abortion, is also available to the Court. Plaintiff Sandra Cano never experienced an abortion herself and never wanted one. Sandra Cano's baby in *Doe* was born and placed for adoption before the Supreme Court decision in *Doe* took effect.[80] Plaintiff Sandra Cano's position was misrepresented to the Court.[81] She did not want an abortion.[82] It was not her choice; it was the choice of others.[83] Abortion was mostly rare and

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abortion provider, attached hereto in the Appendix, Tab G, pp. 5389-5395.

[79] *Id.*

[80] *See* Affidavit of Plaintiff Sandra Cano, attached hereto in the Appendix, Tab A, pp. 1-11.

[81] *Id.*

[82] *Id.*

[83] *Id.*

illegal in 1973.[84] As the attached Affidavit of Plaintiff and the Women's Affidavits reveal, assuming what an abortion is like and actually experiencing an abortion are two very different things, both physically and mentally.[85]

33. In addition to the testimony of Plaintiff Sandra Cano (both in the attached Affidavit and her live testimony to be given at the evidentiary hearing requested herein), the attached Women's Affidavits from more than one thousand Post-Abortive Women are the largest body of direct, sworn, factual evidence about the effects of abortion on women that has ever been presented to the United States courts. This large body of new factual evidence was not available to this Court, the United States Supreme Court, or Sandra Cano in 1973.[86]

34. The Women's Affidavits, the Memorandum of Law in Support of this Motion, and the new factual evidence and testimony previously unavailable to the Court that will be presented at the evidentiary hearing requested herein reveal:

a) that abortion is inherently unlike any other medical procedure and the long-term physical and mental effects are devastating to women;

b) the mental and emotional consequences of abortion include increased likelihood of attempting suicide, increased rate of chemical abuse and addiction, depressive disorders, anxiety disorders,

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[84] Roe v. Wade, 410 U.S. at 118, n.2.

[85] *See* Affidavit of Plaintiff Sandra Cano, attached hereto in the Appendix, Tab A, pp. 1-11; *see also* the Women's Affidavits, attached hereto in the Appendix, Tab B, pp. 12-1705.

[86] *Id.*

promiscuity, self-destructive behavior including self-mutilation and repeated abortions, food related disorders including anorexia and bulimia, phobias and many other severe emotional and mental damage and suffering;

c) that abortion dramatically increases the likelihood of developing breast cancer, pelvic inflammatory disease, infertility, complications in later pregnancies, miscarriage, uterine perforations, tubal or ectopic pregnancies, placenta previa, and a number of other physical complications;

d) that abortion is often not a voluntary decision but is the result of pressure and coercion from one or more individuals or outside circumstances;

e) that the normal protections of a physician-patient relationship are absent in the context of abortion;

f) that abortion is usually performed with a lack of informed consent from the patient.[87]

In light of these new facts, and others, that were not known or anticipated by the Court at the time of its original ruling, the prospective application of the decisions

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[87] *See* Affidavit of Plaintiff Sandra Cano, attached hereto in the Appendix, Tab A, pp. 1-11; *see also* the Affidavits of more than one thousand Post-Abortive Women, attached hereto in the Appendix, Tab B, pp. 12-1; the Affidavit of Norma McCorvey, attached hereto in the Appendix, Tab C, pp. 1706-1719; the Affidavit of Theresa Burke, Ph.D., attached hereto in the Appendix, Tab D, pp. 1720-1973; the Affidavit of David Reardon, Ph.D., attached hereto in the Appendix, Tab E. pp. 1974-2108, Exhibits to Affidavit of David Reardon, Ph.D., Appendix Tab E, pp. 2109-4515; the Client Intake Records for Pregnancy Care Centers, attached hereto in the Appendix, Tab F, pp. 4516-5388; the Affidavit of Carol Everett, former abortion provider, attached hereto in the Appendix, Tab G, pp. 5389-5395.

in *Roe* and *Doe* would be inherently unjust. It is just that the Court's judgment be vacated.

35. New facts, previously unavailable to the Court, have been revealed regarding the decision made in *Doe v. Bolton*. The attached Affidavit of Sandra Cano reveals new facts regarding her case that were previously unavailable to the Court.[88] Her Affidavit shows that serious fraud was committed upon this Court and the United States Supreme Court in her case. The Affidavit of Sandra Cano reveals facts which if known at the time would probably have prevented the United States Supreme Court from erroneously creating the "health" exception to *Roe's* trimester framework. Her affidavit demonstrates her own desire that the decision in her case be overturned.[89] While this particular evidence maybe too late for a Rule 60(b)(1) to (3) motion, it is part of the historical context of this case.

CHANGES IN THE LEGAL CONDITIONS

36. There have been significant changes in both decisional law and statutory law since the Court's original ruling in this case. The three-judge court in the original cause of action in *District Court Doe* herein declared the Georgia abortion statutes void as vague and overbroad, infringing upon Plaintiffs' Due Process and Equal Protection rights under the Fourteenth Amendment.[90] However, this

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[88] *See* Affidavit of Sandra Cano, attached hereto in the Appendix, Tab A. pp. 1-11.

[89] *Id.*

[90] Doe v. Bolton, 319 F. Supp. 1048, 1056 (N.D. Ga. 1970).

Court recognized that the right to terminate a pregnancy is not "unbounded" and presciently expressed concern about "abortion mills" and the "manner of performance as well as the quality of the final decision to abort."[91] Likewise, in *Roe,* the United States Supreme Court stated that the state has a legitimate interest in protecting both the pregnant woman's health and the potentiality of human life, each of which interests grows and reaches a "compelling" point at various stages of the woman's approach to term.[92] However, the Court's decision in *Doe* undermined those interests by expanding the health exception to a single woman and a single doctor.

37. Since the original ruling of this Court and the United States Supreme Court in *Roe,* the Supreme Court has issued opinions in a number of subsequent cases that have significantly undermined the legitimacy of its ruling in *Doe and Roe. Webster v. Reproductive Services*[93], began the subsequent erosion of *Doe* and *Roe,* while not overruling them directly. The *Webster* ruling first allowed a state to favor childbirth over abortion and provided for viability testing, stating, [t]here is no doubt our holding today will allow some governmental regulation of abortion that would have been prohibited . . . " under prior decisions.[94]

38. The United States Supreme Court in *Casey*[95] further undermined *Doe* and *Roe.* The *Casey* opinion

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[91] *Id.* at 1055-56.

[92] 410 U.S. at 162-63.

[93] Webster v. Reproductive Services, 492 U.S. 490 (1989) (hereinafter referred to as "*Webster*").

[94] 492 U.S. at 520-21.

[95] Planned Parenthood v. Casey, 505 U.S. 833 (1992) (hereinafter referred to as "*Casey*").

elevated society's profound interest in "potential" life[96]. Furthermore, the plurality opinion in *Casey* rejected *Roe's* classification of abortion as a fundamental right requiring strict scrutiny, stating, "[w]e acknowledge that our decisions after *Roe* cast doubt upon the meaning and reach of its holding."[97]

39. The over-expansive definition of "fundamental liberty interest" set forth in *Roe,* and even *Casey,* has been rejected by subsequent decisions of the United States Supreme Court. Specifically, in *Washington v. Glucksberg*[98] the Court's decision changed the underlying test used to determine which rights asserted by litigants should be ranked as "fundamental liberty interests" that are constitutionally protected. In *Glucksberg,* a physician filed suit in federal court, claiming Washington's law banning assisted suicide violated his and his patient's Fourteenth Amendment liberty interest in determining the time and manner of one's death.[99] The *Glucksberg* Court established a new, two-prong test to enumerate which rights are so "implicit in the concept of ordered liberty"[100] as to be considered "fundamental" and therefore constitutionally protected. To be considered a fundamental liberty interest, the United States Supreme Court held that the right in question must:

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[96] *Id.*

[97] Casey, 505 U.S. at 845.

[98] Washington v. Glucksberg, 521 U.S. 702 (1997) (hereinafter referred to as "*Glucksberg*").

[99] *Id.*

[100] *See* Palko v. Connecticut, 302 U.S. 319, 325 (1937).

(1) be "so rooted in the traditions and conscience of our people as to be ranked as fundamental;"[101] and,

(2) carefully formulating the fundamental liberty interest[102] by finding a cognizable basis in the Constitution's language or design.[103]

40. In *Glucksberg,* the United States Supreme Court found that there is no fundamental liberty interest to determine the time and manner of one's death because: (1) "[the] right to assisted suicide finds no cognizable basis in the Constitution's language or design";[104] and, the "right to die" is not "so rooted in the traditions and conscience of our people as to be ranked as fundamental."[105] Applying the *Glucksberg* test directly to the case at bar, the right to procure an abortion (1) finds no cognizable basis in the Constitution's language or design, and (2) is not "so rooted in the traditions and conscience of our people as to be ranked as fundamental."[106] To the contrary, the United States Supreme Court itself in *Roe* indicated that "[t]he Texas statutes under attack here are typical of those that have been in effect in many States for approximately a century."[107] If anything, the regulation of abortion. rather than the right to procure an abortion, is "rooted in the

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[101] *Id.* at 721.

[102] *Id.*

[103] Glucksberg, 521 U.S. at 723, n. 18 (*quoting* Vacco, 80 F.3d 716 (1997)).

[104] *Id.* at 723, n. 18 (*quoting* Vacco, 80 F.3d 716 (1997)).

[105] *Id.* at 721 (*quoting* Snyder, 291 U.S. 97, 105 (1934)).

[106] *Id.*

[107] 410 U.S. at 116.

traditions and conscience of our people"[108] as evidenced by a century of statutes prohibiting the same. In light of such dramatic changes in decisional law, if this original cause of action were decided today, under the *Glucksberg* standard, the Georgia and Texas abortion statutes should be upheld as constitutionally sound. Based upon these subsequent changes in decisional law, there is no fundamental liberty interest to procure an abortion and it would be error for the Court to refuse to grant this Motion pursuant to Fed. R. Civ. P. 60(b) in light of such changes.[109] "It would be anomalous if the results reached under a constitutional standard remained binding after the standard or test was repudiated."[110]

41. Extremely significant changes in the law of federalism have occurred in United States Supreme Court decisions in recent years which would justify returning the decision whether to allow or prohibit abortion to the states.[111] Before *Roe* federalized the issue, women and family health and safety issues, and specifically abortion, were traditional state and local concerns.[112] With the re-emergence of federalism in recent landmark decisions, the United States Supreme Court has moved this critical area of constitutional jurisprudence to the forefront of federal judicial review. Beginning with *United States v. Lopez,* this

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[108] 521 U.S. at 721 (*quoting* Snyder, 291 U.S. 97, 105 1934)).

[109] *See* Agostini v. Felton, 521 U.S. 203 (1997).

[110] Planned Parenthood v. Casey, 947 F.2d 682 (1991).

[111] *See, e.g.*, U.S. v. Lopez, 514 U.S. 549 (1995) U.S. v. Morrison, 529 U.S. 598 (2000), Seminole Tribe of Florida v. Florida, 517 U.S. 44, 116 S. Ct. 1114 (1995).

[112] 410 U.S. at 139, 140 n. 34-37; *see also* Webster v. Reproductive Services, 492 U.S. 490, 520 (1989) ("areas of medical practice traditionally subject to state regulation").

movement represents a renewed emphasis on the judicial enforcement of the constitutional federalism boundary lines.[113] While the Court has largely focused on Congress in *Lopez* and its progeny, the doctrine of federalism applies to the dangers of overreaching national power among all branches of government, including the Supreme Court itself. In fact, "the danger to federalism may be greater from the federal courts than from Congress simply because judicial intervention is anti-democratic" such that "the states have relatively little recourse."[114] The common thread among the line of federalism cases involves the court's restriction of expansion of national power into traditional state law matters such as education, crime, family law and health issues, which abortion clearly involves.

42. Yet *Doe* is now completely contrary to this new line of cases. The Court's application of *Lopez* federalism to *Doe* could not only properly return this traditional state law matter to the states, but it could also restore the democratic processes needed on this issue of great controversy.[115] Therefore, in reversing *Doe,* the Court would be correcting excessive judicial intervention in these cultural clashes which can stoke great public resentment, politicize the courts themselves, and impede the abiding progress

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[113] *See, e.g.,* U.S. v. Lopez, 514 U.S. 549 (1995); U.S. v. Morrison, 529 U.S. 598 (2000), Seminole Tribe of Florida v. Florida, 517 U.S. 44 (1995).

[114] J. Harvie Wilkinson III, *The 2000 Justice Lester W. Roth Lecture: Federalism for the Future,* 74 S. CAL. L. REV. 523, 536 (2001).

[115] *See* Plaintiff's Memorandum of Law in Support of Rule 60 Motion for Relief From Judgment.

that comes from democratic governance.[116] The *Doe* and *Roe* decisions have politicized every presidential election and United States Supreme Court nomination and even Court of Appeals nominations since their decision and will do so until they are overruled and this issue is returned to the states and the people for democratic regulation.

43. In addition to the considerable changes in decisional law outlined above, there have also been significant changes in statutory law since the Court's original ruling in *Doe*. The overwhelming majority of states now permit some form of recovery for the loss of a child in the womb. For example, Ohio,[117] North Carolina,[118] Massachusetts,[119] Vermont,[120] and the District of Columbia[121] allow one or both parents to recover for emotional distress or mental anguish suffered as a result of the death of an unborn child, and, additionally, for the death of a viable fetus under a wrongful death cause of action. However, several states that allow one or both parents to recover for

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[116] *See* Webster, 492 U.S. at 535 (Scalia, J. concurring in judgment and bemoaning "carts full of mail" and "demonstrators" outside the Supreme Court).

[117] *See* Werling v. Sandy, 476 N.E.2d 1053, 1054 (1985); Browning v. Kirk Welding & Fabricating, Inc., 1975 Ohio App. LEXIS 6691 4-5.

[118] *See* DiDonato v. Wortman, 320 N.C. 423, 358 S.E.2d 489, 493 (1987); Johnson v. Ruark Obstetrics and Gynecology Associates, P.A., 327 N.C. 283, 395 S.E.2d 85, 98-99 (1990).

[119] *See* Thibert v. Milka, 419 Mass. 693, 646 N.E.2d 1025, 1026 (1995); Mone v. Greyhound Lines, Inc., 368 Mass. 354, 331 N.E.2d 916, 917 (1975); Moesta v. Deloge, 1997 Mass. Super. LEXIS 232 10-12.

[120] *See* Vaillancourt v. Medical Center Hospital of Vermont, Inc., 139 Vt. 138, 425 A.2d 92, 94-95 (1980).

[121] *See* Greater Southeast Community Hospital v. Williams, 482 A.2d 394, 396-397 (D.C. 1984); District of Columbia v. McNeill, 613 A.2d 940, 942-944 (D.C. 1992).

emotional distress or mental anguish suffered as a result of the death of an unborn child do not recognize a wrongful death cause of action for the death of a viable fetus.[122] It is important to note that most of these states characterize a viable fetus as a "person" or "minor child" under their wrongful death statutes.

44. Another significant statutory change since this Court's original decision in this cause of action is the "Safe Place for Newborns Act of 2002."[123] The purpose of this law is to "prevent injuries to and deaths of newborn children . . . "[124] Under the Safe Place for Newborns Act, a mother will not be prosecuted for cruelty, delinquency, or abandonment of her newborn child if the child who is under one week old is taken to a medical facility.[125] Because of this new law, there is no longer a need to seek an abortion to avoid any "unwanted" burdens of motherhood. The effect is

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[122] *See* Greater Southeast Community Hospital v. Williams, 482 A.2d 394, 396-397 (D.C. 1984); District of Columbia v. McNeill, 613 A.2d 940, 942-944 (D.C. 1992); Thibert v. Milka, 419 Mass. 693, 646 N.E.2d 1025, 1026 (1995); Mone v. Greyhound Lines, Inc., 368 Mass. 354, 331 N.E.2d 916, 917 (1975); Moesta v. Deloge, 1997 Mass. Super. LEXIS 23210-12; DiDonato v. Wortman, 320 N.C. 423, 358 S.E.2d 489, 493 (1987); Johnson v. Ruark Obstetrics and Gynecology Associates, P.A., 327 N.C. 283, 395 S.E.2d 85, 98-99 (1990); Werling v. Sandy, 17 Ohio St.3d 45, 476 N.E.2d 1053, 1054 (1985); Browning v. Kirk Welding & Fabricating, Inc., 1975 Ohio App. LEXIS 6691 4-5; Vaillancourt v. Medical Center Hospital of Vermont, Inc., 139 Vt. 138, 425 A.2d 92, 94-95 (1980). *But see* Zavala v. Arce, 58 Cal. App. 4th 915, 933, 68 Cal. Rptr. 2d 571 (1997); Bayer v. Suttle, 23 Cal. App. 3d 361, 364-65, 100 Cal. Rptr. 212 (1972); Tanner v. Hartog, 696 So. 2d 705, 708 (Fla. 1997); Stokes v. Liberty Mutual Ins. Co., 202 So. 2d 794, 795-96 (Fla. App. 1967); Giardina v. Bennett, 111 N.J. 412, 545 A.2d 139, 139 (1988).

[123] Ga. Code § 19-10A-1 *et seq.* (2002).

[124] *Id.* § 19-10A-3.

[125] *Id.* § 19-10A-4.

that the state of Georgia will help the mother and is willing to assume all of the responsibilities, financial and otherwise, of raising the child. Currently at least forty (40) states have enacted similar legislation.[126] The Supreme Court in *Roe* was concerned with imposing upon the mother:

> "a distressful life and future . . . psychological harm . . . mental and physical health may be taxed by child care . . . the distress for all concerned, associated with the unwanted child, and there is the problem of bringing a child into a

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[126] *See* Ala. Code § 26-25-1 *et seq.* (2000); Ariz. Rev. Stat. § 13-3623.01 (2001); Ark. Code Ann. § 9-34-202 (Michie 2001); Cal. Health & Safety Code § 1255.7 (Deering 2000); Colo. Rev. Stat. § 19-3-304.5 (2000); Conn. Gen. Stat. § 17a-57 *et seq.* (2000); Del. Code Ann. tit. 16 § 907A (2001); Fla. Stat. Ann. § 383.50 *et seq.* (West 2000); Ga. Code Ann. § 19-10A-1 *et seq.* (2002); Idaho Code § 39-8201 *et seq.* (2001); § 325 Ill. Comp. Stat. 2/1 *et seq.* (West 2001); Ind. Code § 31-34-2.5-1 *et seq.* (Michie 2000); Iowa Code §233.1 *et seq.* (2001); Kan. Stat. Ann. § 38-15,000 (2000); Ky. Rev. Stat. Ann. § 405.075 (2002); La. Ch. Code art. 1701 *et seq.* (West 2000); Me. Rev. Stat. Ann tit. 17-A § 553 (2002); Md. Code Ann. Cts. & Jud. Proc. § 5-641 (2002); Mich. Comp. Laws § 750.135 (2000); Minn. Stat. § 145.902 (2000); Miss. Code Ann. § 43-15-201 *et seq.* (2001); Mo. Rev. Stat. § 210.950 (2002); Mont. Code Ann. § 40-6-401 *et seq.* (2001); N.Y. Penal § 260.03; Penal § 260.15; and, Soc. Serv. § 372-g (2000); N.C. Gen. Stat. § 7B-500 (2001); N.D. Cent. Code § 50-25.1-15 (2001); Ohio Rev. Code Ann. § 2151.3515 *et seq.* (Anderson 2001); Okla. Stat. tit. 10 § 7115.1 (2001); Or. Rev. Stat. § 418.017 (2001); Pa. Stat. Ann. tit. 23 § 6501 *et seq.* (2002); R.I. Gen. Laws § 23-13.1-1 *et seq.* (2001); S.C. Code Ann. § 20-7-85 (2000); S.D. Codified Laws § 25-5A-27 *et seq.* (Michie 2001); Tenn. Code Ann. § 68-11-255 (2001); Tex. Fam. Code Ann. § 262.301 *et seq.* (West 1999); Utah Code Ann. § 62A-4a-801 *et seq.* (2001); Wash. Rev. Code § 13.34.260 (2002); W. Va. Code § 49-6-1 *et seq.* (2000); Wis. Stat. Ann. § 49.192 (West 2001); Wyo. Stat. Ann. § 14-11-101 *et seq.* (Michie 2003). *See generally* Baby Moses Project at www.babymosesproject.org.

> family already unable, psychologically and otherwise, to care for it."[127]

At the time *Doe* was decided, the laws providing for all medical expenses associated with pregnancy for the poor and allowing any mother to let the state bear all burden associated with raising a child did not exist, and the Court could not have known that any such law would ever be enacted. The burdens the Court was concerned about being imposed upon a mother are no longer legally hers should she choose not to bear them. In light of such a dramatic change in law, the *Doe* and *Roe* decisions are no longer based on sound legal or factual circumstances.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff Sandra Cano respectfully prays for the following relief:

a. the immediate re-convening of a three-judge court pursuant to 28 U.S.C. §§ 2281 and 2284;

b. an evidentiary hearing and oral argument before the three-judge court;

c. an order by the three-judge court that the judgment heretofore entered in favor of Plaintiff is vacated in light of changed factual and legal conditions because it is no longer just or equitable to give it prospective application; and,

d. such further relief as this Honorable Court may deem just and proper.

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[127] Roe v. Wade, 410 U.S. at 153.

APPENDIX:

Tab A **Affidavit of Plaintiff Sandra Cano, pp. 1-11**

Tab B **Affidavits of More Than One Thousand Post-Abortive Women (Referred to Herein as "Women's Affidavits"), pp. 12-1705**

Tab C **Affidavit of Norma McCorvey, the "Roe" of Roe v. Wade, pp. 1706-1719**

Tab D **Affidavit of Theresa Burke, Ph. D., pp. 1720-1973**

Tab E **Affidavit of David Reardon, Ph.D., pp. 1974-2108 Exhibits to Affidavit of David Reardon, Ph.D., pp. 2109-4515**

Tab F **Client Intake Records from Pregnancy Care Centers, pp. 4516-5388**

Tab G **Affidavit of Carol Everett, Former Abortion Provider, pp. 5389-5395**

Tab H **Scientific and Medical Analysis, pp. 5396-5546**

Tab I **Affidavit of Allan Parker, pp. 5547-5556**

Tab J **Affidavit of David Reardon, Ph.D., on Reasonable Timeliness, pp. 5557-5562**

Tab K **Affidavit of Theresa Burke, Ph.D., on Reasonable Timeliness, pp. 5563-5565**

Respectfully Submitted,

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CERTIFICATE OF SERVICE

A true copy of the above and forgoing has been hand-delivered to: the Georgia Attorney General, Thurbert E. Baker, 40 Capitol Square, SW, Atlanta, GA 30334; the District Attorney of Fulton County, Georgia, Paul L. Howard, Jr., 136 Pryor Street SW, 3rd Floor Atlanta, GA 30303; and, Chief of Police of the City of Atlanta, Richard Pennington, 675 Ponce de Leon, NW, Atlanta, GA 30308.

SIGNED on this the 25th day of August, 2003.

/s/ Allan E Parker Jr
Allan E. Parker, Jr.

CERTIFICATE OF COMPLIANCE WITH RULE LR 5.1B

This brief complies with the type-volume limitation of LR 5.1B because this brief was prepared in New Times Roman in at least 14 point.

This brief complies with the typeface requirements and the type style requirements of LR 5.1B because this brief has been prepared in a proportionally spaced typeface using Microsoft Word Version 97 in 14 point Times New Roman font.

SIGNED this the 25th day of August, 2003.

/s/ Allan E Parker Jr
Allan E. Parker, Jr.

[LOGO] **The Justice Foundation**
[Address Omitted In Printing]

July 12, 2006

Mr. Bill Suter
Clerk, Supreme Court of the United States
1 First Street N.E.
Washington, D.C. 20543

RE: Rule 32 Filing of Record Material
Regarding Petition for Writ of Certiorari from the Eleventh Circuit No. 05-11641;
Cano v. Baker (USDC 13676; formerly 70-CV-13676 formerly known as *Doe v. Bolton*)

Dear Mr. Suter:

Pursuant to Rule 32.1, Sandra Cano, the former "Doe" of *Doe v. Bolton*, Petitioner in the above-styled proceeding now known as *Cano v. Baker*, hereby places in the custody of the Clerk, true and correct copies of affidavits which are exhibits of material forming part of the evidence in the case below. *See* Reasons for Filing attached.

Specifically, it includes over 1,000 post-abortive women's affidavits, the affidavits of experts Dr. Theresa Burke, Dr. David Reardon and Pregnancy Care Center Counseling Intake Records. *See* Summary of Evidence attached. The evidence demonstrates the importance of this case, the unintentional harm caused to women by abortion, and the need for certiorari due to changed factual and legal conditions since 1973.

Sandra Cano will be filing her Petition for Writ of Certiorari with this court on or before July 31, 2006. On August 25, 2003, as an original party to the judgment in *Doe v. Bolton*, Sandra Cano filed a post-judgment Rule 60

Motion for Relief from Judgment asking that the *Doe v. Bolton* opinion be reversed and the judgment in her favor be vacated. Thurbert E. Baker is the successor to Arthur Bolton, Attorney General for the State of Georgia, who was the "Bolton" of *Doe v. Bolton*. Her motion for relief is based on *Agostini v. Felton*, 521 U.S. 203 (1997) on the grounds that factual and legal conditions in her case have changed substantially since 1973 so that it is no longer just to give her judgment prospective application.

The attached "Reasons for Filing and Summary of the Rule 60 Motion Evidence" explains the need for filing the evidence for assistance to the Court in evaluating the Petition for Certiorari.

Filing is made more than two weeks prior to submission of the Petition pursuant to the rule.

Sincerely,

Allan E. Parker, Jr.
Lead Attorney for
Sandra Cano, the former
Doe of *Doe v. Bolton*

cc: Shalen S. Nelson
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REASONS FOR FILING AND SUMMARY OF THE RULE 60 MOTION EVIDENCE

I. REASONS FOR FILING

Petitioner believes it is very important to the nation, and to the Court, that the Court view all of the evidence in support of Cano's Rule 60 Motion, even at the Petition for Certiorari stage. Petitioner would not presume to ask the United States Supreme Court to overturn one of its decisions without preparing substantial evidence for the Court's review.

Sandra Cano filed over 5,000 pages of sworn evidence with her Rule 60 Motion. In determining whether to grant a Writ of Certiorari and hear the case, the Court may desire to consider this evidence to help it determine whether or not the case warrants the Court's full review. The evidence is extensive, so this letter must be lengthy to adequately summarize the evidence.

Attaching over 5,000 pages of evidence as an Appendix is too bulky and voluminous to append to 40 copies of a Petition as this would require printing 200,000 pages. Filing one complete set of evidence with the Court can be accomplished with two boxes. Hard copies of the sworn evidence are then available to those members of the Court who would wish to review the evidence before making a decision on certiorari.

Justice requires that when the original "Doe" of *Doe v. Bolton* presents substantial evidence of changed legal and factual conditions, it should be heard under Rule 60. Petitioner presented over 1,000 affidavits of post-abortive women, citations to over 300 scientific studies and medical literature, reports of psychotherapists, geneticists, neonatologists, and numerous other experts, as well as persons with experience working in abortion clinics.

Rule 60(b) is the appropriate vehicle for the Supreme Court to review one of its own prior decisions. *Agostini v. Felton*, 521 U.S. 203 (1997). According to *Agostini*, only the Supreme Court can overturn one of its own prior decisions. This Court stated in *Agostini*:

> We do not acknowledge, and we do not hold, that other courts should conclude our more recent cases have, by implication, overruled an earlier precedent. We reaffirm that "if a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions." *Rodriguez de Quijas,* 490 U.S. at 484. Adherence to this teaching by the District Court and Court of Appeals in this case does not insulate a legal principle on which they relied from our review to determine its continued vitality. The trial court acted within its discretion in entertaining the motion with supporting allegations, but it was also correct to recognize that the motion had to be denied unless and until this Court reinterpreted the binding precedent. *Agostini v. Felton*, 521 U.S. 203, 238 (1997).

Because of the unique nature of *Doe v. Bolton*, and the fact that it is a Supreme Court decision which is being reviewed under Rule 60 based on changes in legal and factual conditions, counsel believes it is a special obligation of this Court to carefully consider the evidence, in effect *de novo*. The trial judge and the Court of Appeals stated they could not reverse *Doe*, no matter what the evidence showed because of *Agostini*. This Court can only make a well-informed decision if it has the opportunity to see and review the evidence. In the normal case, one can tell what the legal questions are and whether they are important without looking at the Record. But in this case, only the Supreme Court can determine if factual and legal conditions have substantially changed since 1973, and only a substantial amount of evidence could demonstrate to the Court that there is a "manifest injustice". *Agostini v. Felton*, 521 U.S. 203 (1997). Therefore, counsel sincerely believes it is important at the Petition stage, and worth the Court's time, for the Supreme Court to have the most important sworn evidence before it when it decides whether or not to grant the Petition for Writ of Certiorari.

Filing this portion of the record will mean that the Petition for Certiorari will be much shorter and more manageable for the Court and its staff to handle. The printer has already indicated that extra time would be required to typeset all of the evidence and put it in a regular appendix in Petition form at a cost of more than $50,000 just for the Women's Affidavits alone.

In summary, extensive sworn evidence has been provided in support of the Rule 60 Motion because this Court is the only court that is capable of re-evaluating *Doe*. Reversing *Doe v. Bolton* is not a pure question of law, but requires understanding of the facts, medical research

and women's actual experience of abortion. Therefore, this Court should have the evidence before it when it makes the initial determination whether to hear the case and the following is a summary of the items being filed in the custody of the Clerk at this time.

II. SUMMARY OF EVIDENCE

A. OVER 1,000 WOMEN'S AFFIDAVITS – There are over 1,000 affidavits from women who have actually experienced abortion. These constitute R. at 000013 - 001705. *At the time of filing, this was the largest body of direct, sworn testimony in the world on the effects of abortion on women.* Since then, an additional approximately 1,000 women have sent in affidavits, for which a lodging letter has been filed. This will help the Court to actually understand how abortion affects the women that the Court wants to protect and serve. As far as counsel can determine, it is the largest body of evidence the Court has ever had in determining the effect of abortion on women, particularly through actual sworn testimony.

As the Affidavits attest, more than 1,000 witnesses endured great pain and sacrifice to give this testimony because they wanted the Court to know the truth about what abortion did to them. If abortion is a good thing for women, the Court should know it. If abortion is a bad thing for women, the Court should know that as well. Abortion is such a tragic and secret thing, that many of the women who testified would only do so using initials rather than using their full names. Many women agonized for months over whether to even participate in the affidavit process. They had to be willing to expose their most painful, private, personal, and secret experiences, and be willing perhaps to be cross-examined in a public courtroom. They were willing to sacrifice to tell the Court the truth about abortion. Who better than women

who have experienced abortion to tell the Court the reality of abortion in American abortion facilities today?

It is extremely important for the Court to be able to view as many of these affidavits as will assist the Court. This sworn testimony personalizes and humanizes the reality of abortion in a way statistics can never portray. By providing their testimony, the women are eager to see other women protected from the danger and harm they have suffered. They are eager for the Court to know the truth which heretofore had been painfully hidden in the secret places of their hearts. As far as counsel can determine, no woman filled out an affidavit without crying about it because of the tremendous pain involved. Whatever one's beliefs about abortion, the Court should approach this evidence with an open mind and a compassionate heart.

The Court must be prepared to appreciate the diversity of post-abortion responses. Every woman is different. Abortion touches a person's life on many levels. It impacts a woman's view of herself in medical, political, religious, philosophical, social and many other ways. Because it affects a woman's life in so many dimensions, it is a very complex experience. This is why it is exceptionally difficult for women to understand, process, and reconcile this experience with who they are and who they want to be. Not reviewing the complexity of this evidence reduces women to stereotypes. If one is an advocate of abortion rights, it may be painful to hear how abortion has scarred and injured some women. One may feel the impulse to reject the truth of these testimonies out of fear that such information could threaten the legal status of abortion or inappropriately discourage women from making the "right choice" to abort. Justice requires that one set aside one's political and

ideological goals, at least while reviewing the evidence. The fact that abortion has caused so much division and turmoil in our country's political life clearly suggests that it can also cause internal divisions and anxiety in a woman's life. The real experiences of women in abortion facilities, rather than judicial theory and the unverified assumptions of *Doe v. Bolton*, should guide this Court in the future. In sum, we respectfully request the over 1,000 Women's Affidavits be read prior to making this important decision.

B. AFFIDAVIT OF DR. TERESA BURKE, Ph.D. – Dr. Burke has specialized in treating women struggling with post-abortion issues, through individual counseling and group therapy sessions, since 1986. Her testimony is extremely important to understanding the context of the more than 1,000 post-abortive women's testimony and the variety of complex psychological reactions that women in general experience as a result of abortion. Her affidavit is 252 pages long. (R. at 001723 – 001973). Abortion reaction is not a simple subject because of the large variety of circumstances. Women's psycho-social history is unique to each woman, and the adverse consequences of abortion take a variety of forms. Her affidavit is too extensive to be reprinted in an appendix for a Petition, but it is also too important to be ignored, especially in such an area as abortion where only the Court can now protect women. Drawing on the experience and insights of hundreds of her clients, Dr. Burke shows how repressed feelings about abortion may be acted out through self-destructive behavior, broken relationships, obsessions, eating disorders, parenting difficulties, and other emotional or behavioral problems. She also explores the cultural and psychological obstacles to post-abortion healing. She examines why friends

and families and society erect walls of silence around a loved one's grief. She also reveals how society and this Court can and should listen to those who are struggling with past abortions.

After abortion, many women face a daily internal battle between condemning and defending themselves. Dr. Burke notes the many ways in which abortion causes conflict. It fragments political parties, churches, schools and neighborhoods. It divides families. It pits husbands against wives, mothers against daughters, sisters against sisters. It divides the academic, research and legal communities. These very conflicts in society, of which this Court is so keenly aware, also reflect the internal discord that occurs within the women themselves. Dr. Burke explains how the woman herself may be deeply conflicted between desires to keep a child and feelings of helplessness that she cannot care for a child. She may want a child and her partner or her parents may want her to get rid of the child. She may want to abort and others she loves want her to keep the child. She may have even deeply wanted to abort the child herself, and later find herself with feelings of condemnation and self-guilt over having made that decision. The same painful torment and controversy that divides America so deeply today, divides women internally. Just as the mere discussion of abortion often produces anger and arguments in society, the abortion experience can produce anger and rage in many women. On the other hand, just as many members of society avoid discussing abortion altogether because they do not want to deal with the painful emotions it can involve, many women who have abortions repress their deepest feelings and this repression can lead to severe psychological disorders.

Just as the Court will be greatly benefited by reviewing the testimony of more than 1,000 Women, the

Court will be greatly aided by Dr. Burke's research, expert opinions, analysis, and explanation of the varied reactions that women undergo. People who have not experienced abortion, cannot fully understand it. They cannot generalize from their own life experiences as to how they would feel. Even for the post-abortive women, Dr. Burke demonstrates putting them in touch with their feelings is fundamental to recovery, however, this can be a difficult process because any discussion of these unwanted emotions generates tremendous resistance, denial and fear. Even pro-abortion groups such as the National Organization of Women and Planned Parenthood will freely admit that abortion is a difficult and tragic decision. *See e.g.*, Planned Parenthood Corpus Christi Board Member who stated "Abortion is an agonizing choice." *"My Choice"*, TEXAS MONTHLY, at 93 (Dec. 2004). That is why they argue the decision should be solely between a woman and her doctor. Yet very few people are willing to look at the long term consequences of this admittedly "tragic" decision. Dr. Burke's testimony also explains why the fact that abortion hurts women is so often hidden by the women themselves. She explains how the truth is hidden from women, and by women. She explains how the fact that abortion is legal makes women presume it is safe. It is also assumed by women to be morally "right" because the Court has approved it, even though the Court is probably not trying to make moral decisions for individual women. *See* Women's Affidavits (R. at 000013 – 001705). Yet many women feel tremendous guilt after experiencing abortion.

Dr. Burke explains how women who begin to explore these feelings are met with repression by other members of society. If a mother took her daughter to have an abortion because she thought it was the right thing to do, and her daughter afterwards begins to cry

and complain about the abortion, the mother is filled with extreme anxiety and emotions which are difficult to process. The post-abortive women usually experience repression and denial such as, "You'll get over it." "Don't worry, it was the best thing. You had to do it." "Get on with your life." The suffering abortion victim is repressed by society and often represses herself again.

Dr. Burke explains the effects of the abortion clinic bias in favor of abortion. If a woman in a crisis pregnancy wants to place her child for adoption, by law she is protected from undue influence by the prospective adopting couple whose interests are presumed to be in conflict with the woman's. That is why we have a requirement for neutral adoption agencies, and why even a woman's written agreement to do with her body as she wishes and place her child for adoption is not binding until 10 days after birth in most cases. We recognize in the crisis pregnancy that leads to adoption that women are emotionally vulnerable, particularly susceptible to outside influence, and that their decisions on whether or not to keep the baby may change, sometimes frequently, over the months of pregnancy and even after birth. The law protects women and as a society we help women in these vulnerable pregnancies. The law particularly tries to keep her from being influenced by the people who would profit from her decision, the adopting couple or the agencies. The law forbids financial incentives or pressure on her. However, a woman in a vulnerable or crisis pregnancy who is considering irrevocable termination of her parental rights through abortion is at the mercy of people with a profit motive for counseling her to make a quick decision to get an abortion. *See* Women's Affidavits (R. at 000013 – 001705).

Dr. Burke also testifies about the politicization of abortion consequences research in this country and compares abortion trauma to that of women's "hysteria" in the 1800's, shell-shock victims in World War I, and Vietnam veteran's trauma which eventually led to post-traumatic stress disorder diagnoses. Dr. Burke explains how as a society we know how to debate abortion as a political issue, but we do not know how to talk about it on an intimate and personal level. She explains there is no social norm for dealing with an abortion. There are no Hallmark cards for friends who have had an abortion, declaring either sympathy or congratulations. We do not send flowers. We do not have ceremonies. There are no social customs or rules of etiquette governing acknowledgment of an abortion. Instead, it is ignored or hidden. The September 2003 issue of Glamour Magazine shows how abortionists themselves are divided by political fear over whether to recognize post-abortion trauma. The Glamour Magazine article notes that there are many abortionists, some of whom have combined into a group called the November Gang, who want to openly recognize the grief that women feel. They want to help their patients write letters of forgiveness to their departed children. Others want to continue to deny the existence of abortion grief, primarily for fear that it will lead to restrictions on abortions. Dr. Burke also describes how the same conflict is present in professional associations on the issue of abortion.

Dr. Burke provides extensive analysis and evidence of how women react to abortion. She states an important concept to remember in trying to understand post-abortion reactions is the concept of approach-avoidance conflicts. By definition, a trauma is an overwhelming experience that is simply "too much" for a person to handle or understand. All sides admit that the abortion decision is a "tragic" emotional decision. Even

some of the strongest advocates of *Roe* want abortion to be safe, legal and "rare". Dr. Burke explains the ordinary response to a trauma is to banish the experience from one's mind – to run away from it, hide it or repress it. It is natural for trauma victims to try and forget and put their horrible experience behind them forever.

In conflict with this avoidance reaction, however, is the equally powerful human need to understand one's experiences and find meaning in them. Thus, Dr. Burke shows while a person may consciously choose to avoid thinking about the traumatic experience, his or her subconscious insists on calling attention to the trauma. The subconscious knows that an unresolved trauma is unfinished business. To be conquered, the horror of the traumatic event must be exposed, proclaimed and understood. This tension between the need to hide a trauma and the need to expose it is at the heart of many of the psychological symptoms resulting from abortion. Dr. Burke shows many of the women want to avoid and deny the problems while at the same time seeking resolution and peace of heart. This can result in distortions between women and their children, their partners, other family members, and others in society. Dr. Burke explains some of the human defense mechanisms women experience in various ways such as suppression, repression, rationalization, reaction formation, introjection, undoing, projection, provocative behavior, displacement, conversion, withdrawal, regression, deflection, and denial.

Dr. Burke summarizes and explains, with examples, how these defense mechanisms operate to prevent or disguise the experience of painful emotions. But they always exact a price. In many cases, they can create more problems than they solve. Here are just a few of the pitfalls inherent in defense mechanisms

which can be seen in human terms from the more than 1,000 Women and Dr. Burke's Affidavit.

- First, defense mechanisms consume a great deal of emotional and physical energy. Prolonged use of defensive coping mechanisms may even weaken women's immune systems, making them more vulnerable to heart disease, cancer and other stress-induced illnesses.

- Second, defense mechanisms can distort women's perception of reality. When women do not see or understand themselves and others clearly, they are doomed to fail repeatedly in dealing with their problems in a productive way.

- Third, these defenses do not filter out just painful emotions. Unfortunately, they serve as defenses against all emotions. The women frequently feel "numb", "desensitized", etc. The more defensive mechanisms are used to protect from painful feelings, the more women are cutting themselves off from experiencing the gratifying, heartwarming, joyous, and cheerful feelings that make like [sic] meaningful.

- Fourth, these defenses themselves can give rise to major mental health problems. These can include suicidal behavior, substance abuse, eating disorders, repeated abortions, traumatic re-enactments, and the repetition of a disturbing relationship and events to name just a few of the myriad of symptoms described throughout her Affidavit.

- Finally, Dr. Burke explains defense mechanisms simply do not cleanse negative experiences. They protect from unwanted emotions, but they do not eliminate painful memories and feelings. These problems are concealed, not resolved. As more and more pain is accumulated and hidden away, women will suffer from anxiety, nervousness, agitation, and irritability. Trauma victims may become emotionally unpredictable. Whenever the defenses falter, post-abortive women experience a roller coaster of emotional explosions. It is impossible to fix a leaky pipe until you first acknowledge that it is leaking. The same is true of unwanted emotions. If injured women deny they exist, they deny themselves the chance to heal. Defense mechanisms are not a cure; they are only a series of delaying tactics.

Dr. Burke's affidavit explains why, on average, women are not able to begin to process these unwanted emotions from abortion until 8-10 years after their abortions. She explains such things as anniversary reactions (either abortion date or anticipated birth date) because these are connectors to past trauma. Some women have reactions to their monthly cycle, or the births and deaths of babies, some women create baby substitutes, or find themselves totally unable to connect with babies and their other children.

Dr. Burke also explains how many women feel that God will punish them for having an abortion. Whether one believes in God or not, it is a fact that 90% of the women in America believe in a God. Therefore, unlike other medical procedures, women may feel they need to punish themselves or expect to be punished by God as a result of abortion. This type of

reaction is apparent in some of the Women's Affidavits.

Dr. Burke also explains the link between sexual abuse and abortion and abortion and suicide. Abortion often results in eating disorders which are increasing throughout our culture at epidemic proportions.

In summary, Dr. Burke's affidavit is of vital importance to understanding how abortion affects the mental health of millions of women in this country, and future millions if *Doe* is not re-evaluated. It is extensive, though not cumulative, or repetitious, but succinctly summarizes and outlines a vast human complexity with which the Court must be familiar if it is to make an informed, reasoned, scientific and just decision about the prospective application of the abortion ruling. Dr. Burke's Affidavit can be found in the Record at 001723 - 001973.

C. **AFFIDAVIT OF DR. DAVID REARDON, Ph.D.** – The Affidavit of Dr. David Reardon, is itself approximately 136 pages long, (R. at 001975 – 002108), supported by over 2,000 pages of exhibits (R. at 002109-004515). Dr. Reardon has presented or published more than 30 academic papers at academic conferences or in journals including the American Journal of Obstetrics and Gynecology, the British Medical Journal, the American Journal of Orthopsychiatry, the Canadian Medical Association Journal, the Journal of Child Psychology and Psychiatry, and the Southern Medical Journal. He has been actively engaged in researching women's decision-making processes regarding abortion and their psychological and physical reactions to abortion since 1982. He has also authored numerous books on the subject. He is one of the world's leading experts on the effects of abortion. In this single affidavit, he has

collected and presented over 300 citations to medical and scientific literature concerning the consequences of abortion. His affidavit is too extensive to be reprinted in a Petition, but is probably the single most comprehensive reference in the world to scientific and medical evidence on the adverse consequences of abortion to women in a single document. The affidavit establishes and documents the following:

(1) The death rate associated with abortion was not accurately known in 1973. The best research available today shows that death rates associated with abortion are significantly higher than death rates associated with childbirth. These higher mortality rates serve as an indication of the overall negative effect of abortion on women's health and well-being.

(2) On average, abortion has a significant and negative impact on women's mental health.

(3) The majority of women having abortions are at risk of experiencing significant negative psychological reactions.

(4) Many, perhaps most, women who consent to an abortion find themselves in a vulnerable situation where their normal views and preferences may be distorted or manipulated by those advising them.

(5) Abortion providers do not generally offer adequate screening for risk factors nor do they provide unbiased counseling for informed decision-making. Legal obstacles make it difficult or impossible to hold abortion

providers properly liable for providing inadequate screening and counseling.

(6) Abortion providers have mostly ignored or abdicated their obligation to protect a woman from making an uninformed and not fully consenting decision to abort even if the woman is at high risk of suffering complications or has little prospect of benefiting from the abortion being considered.

(7) In most cases, abortions are being performed not because the physician made a medical *recommendation* based on an informed evaluation of the known risks and benefits of abortion given each patient's unique psychosocial profile. Instead, the abortion is simply performed on the basis of the woman's request for it. Since the woman's request is often driven by elements of duress and fear, proper screening would reveal that the requested procedure may be contra-indicated. Incalculable numbers of women have been exposed to, and suffered, avoidable injuries.

(8) Abortion counseling is inherently flawed by conflicts of interest, such as prejudice, greed, and a commitment to abortion as the preferred solution, or ideological commitment to population control or social engineering. These factors expose women to manipulation and deceit by persons who appear to be in a position to give them good counsel.

(9) There is no statistically validated medical evidence that abortion is ever more likely

to be beneficial to any group of women in any given circumstance.

(10) Abortion places subsequent wanted children at increased risk of miscarriage, premature delivery, congenital complications, development hardships, and child abuse. These abortion associated problems place additional burdens on families and society that were not expected or understood prior to 1973.

(11) Abortion deprives women of medical and health benefits of childbirth that were not known prior to 1973.

(12) Legal abortion is not the best solution to the problem of *illegal abortions*. Instead, legalized abortion increases the total number of injuries suffered by women due to greater exposure to abortion's inherent risks.

(13) Psychological injuries related to abortion reflect, at least in part, reactions to the destruction of the maternal-child relationship.

(14) In moments of confusion, ignorance and duress, abortion often involves the destruction of wanted children.

(15) Even in cases of rape or incest, abortion is harmful to women and surprisingly and counter-intuitively most often unwanted by women once they are in that tragic circumstance.

Dr. Reardon is familiar with the worldwide literature on the subject of abortion consequences and has provided an incalculable service for the Court

in preparing this affidavit. It is extremely important that the Court have this medical literature available to it before making a decision affecting the health of millions of women. By constitutionalizing abortion, the Court has taken away from legislatures any normal consumer protection role they might play after reviewing this scientific literature and acting upon it. Only the Supreme Court now has the authority to make medical and scientific decisions for our country in the area of abortion. Counsel believes it is extremely important that the Court have available for consideration his entire affidavit.

D. **PREGNANCY CARE CENTER COUNSELING INTAKE RECORDS** – The Record also includes sworn business intake forms from pregnancy care centers and post-abortion counseling groups which ask women their individual reactions to abortion. This also shows the large numbers and types of reactions to abortion. The intake forms can be found in the Record at 004516 - 005388.

[LOGO]

The Justice Foundation
[Address Omitted In Printing]

July 12, 2006

Mr. Bill Suter
Clerk, Supreme Court of the United States
1 First Street N.E.
Washington, D.C. 20543

RE: Rule 32.3 Request for Lodging of Non-Record Material Regarding Petition for Writ of Certiorari from the Eleventh Circuit No. 05-11641; *Cano v. Baker* (USDC 13676; formerly 70-CV-13676 formerly known as *Doe v. Bolton*)

Dear Mr. Suter:

Pursuant to Rule 32.3, Sandra Cano, the former "Doe" of *Doe v. Bolton*, Petitioner in the above-styled proceeding now known as *Cano v. Baker*, hereby requests to lodge with the Clerk, true and correct copies of affidavits which are non-record material.

Sandra Cano will be filing her Petition for Writ of Certiorari with this Court on or before July 31, 2006. On August 25, 2003, as an original party to the judgment in *Doe v. Bolton*, Sandra Cano filed a post-judgment Rule 60 Motion for Relief from Judgment asking that the *Doe v. Bolton* opinion be reversed and the judgment in her favor be vacated. Thurbert E. Baker is the successor to Arthur Bolton, Attorney General for the State of Georgia, who was the "Bolton" of *Doe v. Bolton*. Her motion for relief is based on *Agostini v. Felton*, 521 U.S. 203 (1997) on the grounds that factual and legal conditions have changed substantially since 1973 so that it is no longer just to give her judgment prospective application.

Petitioner will also file by separate letter of this same date record materials of over 1,000 post-abortive women's affidavits, the affidavits of experts Dr. Theresa Burke, Dr. David Reardon and Pregnancy Care Center Counseling Intake Records. The evidence demonstrates the importance of this case, the unintentional harm caused to women by abortion, and the need for certiorari due to changed factual and legal conditions since 1973.

Since the filing of Petitioner's Rule 60 Motion in 2003, another 1,000 women have come forward to supply additional affidavits to the Court regarding the horrible harm done to them by abortion. As a service to these injured women, and to assist the Court in its desire to do justice, Petitioner requests that these approximately 1,000 affidavits also be lodged with the Court. This growing body of evidence from all over the country will assist the Court in understanding the depth, complexity, and agony of abortion and the importance of granting certiorari.

This Request for Lodging is filed more than two weeks prior to submission of the Petition pursuant to the rule.

Sincerely,

Allan E. Parker, Jr.

Lead Attorney for Sandra Cano,
the former Doe of *Doe v. Bolton*

cc: Shalen S. Nelson
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% Linda DiSantis, Esq.
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Atlanta, Georgia 30303

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SANDRA CANO, formerly known as MARY DOE, Plaintiff,	§	
V.	§	CIVIL ACTION NO. 70-CV-13676-JOF
ARTHUR BOLTON, Attorney General of the State of Georgia Through His Official Successor in Office, **THURBERT E. BAKER**; **LEWIS R. SLATON**, as District Attorney of Fulton County, Georgia Through His Official Successor In Office, **PAUL L. HOWARD, JR.**; And **HERBERT T. JENKINS**, as Chief of Police of the City of Atlanta Through His Official Successor in Office, **RICHARD PENNINGTON**, Defendants.	§	

MOTION FOR RECONSIDERATION AND TO AMEND ORDER DENYING RULE 60 MOTION

(Filed Apr. 9, 2004)

TO THE HONORABLE COURT:

NOW COMES, SANDRA CANO, formerly known in this Court as Mary Doe, the Plaintiff herein (hereinafter referred to as "Plaintiff"), and respectfully requests the Court under Rule 59(e) to reconsider and alter or amend the order on March 26, 2004 denying her Rule 60 Motion.

1. Pursuant to the Court's inherent equity power and the Federal Rules of Civil Procedure, Rule 59(e), Plaintiff files this Motion to reconsider the Court's decision of March 26, 2004 in this case. Regardless of whether this Motion is referred to as a "Motion for Reconsideration" or a "Motion to Amend or Alter" the final Order of this Court, it is properly filed under Rule 59(e).[1] Plaintiff hereby makes this Motion within the ten-day deadline and seeks reconsideration on errors of law and fact and manifest injustice.[2] Plaintiff objects to the decision being made prior to the convening of a three-judge court and by this Motion does not waive her objection to her jurisdictional complaint.

2. Plaintiff, Sandra Cano, formerly known in this Court as "Mary Doe," is the original Plaintiff herein, and an original party hereto.

3. Defendant, Arthur Bolton, is represented in this cause by and through his official successor in office, Thurbert E. Baker, Attorney General of the State of Georgia. Defendant Lewis R. Slaton is represented in this cause by and through his official successor in office, Paul L. Howard, Jr., District Attorney of Fulton County, Georgia. Defendant Herbert T. Jenkins is represented in this cause by and through his official successor in office, Richard Pennington, Chief of Police of the City of Atlanta.

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[1] Bass v. United States Dep't of Agriculture, 211 F.3d 959 (5th Cir. 2002); Wright v. Preferred Research, Inc., 891 F.2d 886 (11th Cir. 1990).

[2] Servants of Paraclete v. Does, 204 F.3d 1005, 1012 (10th Cir. 2000) (stating grounds for order Rule 59(e) as the need to correct clear error or prevent manifest injustice).

4. This Court determined that all the plaintiffs had standing but only Mary Doe had a justiciable controversy.[3] Therefore, this Court granted a motion to dismiss to that extent all other plaintiffs except Mary Doe.[4] A John and Mary Doe filed a companion complaint in *Roe v. Wade*, cause no. 3-3691-C, and the two actions were consolidated and heard together.[5] Dr. Hallford and the Does were held not to have standing by the United States Supreme Court.[6]

5. By opinion dated July 31, 1970, the judgment of a three-judge court as amended on October 13, 1970 was issued and declared that the portions of the Georgia abortion law allowing abortion only for the impairment of health of the woman, rape, or fetus malformation was unconstitutional.[7] On August 25, 1970, the judgment was filed and entered that the complaint of all parties except Mary Doe be dismissed and that certain sections of the Georgia Abortion Statute was void on its face for unconstitutional overbreadth. On January 22, 1973, the United States Supreme Court affirmed this Court's judgment.[8] On the same day, the United States Supreme Court also ruled in a companion case to *Doe, Roe v. Wade*.[9]

6. On June 17, 2003, Plaintiff filed a Rule 60 Motion for Relief from Judgment. That Motion included a request

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[3] Doe v. Bolton, 319 F. Supp. 1048, 1053 (N.D. Ga. 1970).

[4] *Id.* at 1054. Therefore, they are no longer parties and have not been served.

[5] 410 U.S. at 121-22.

[6] 410 U.S. at 125-28.

[7] Doe v. Bolton, 319 F. Supp. 1048 (N.D. Ga. 1970) (hereinafter "*District Court Doe*").

[8] 410 U.S. 179 (1973) (hereinafter "*Doe*").

[9] Roe v. Wade, 410 U.S. 113 (1973) (hereinafter "*Roe*").

for a three-judge court, request for evidentiary hearing and oral argument, provided case law and authorities for its Motion, and detailed of the changes in both legal and factual conditions that have occurred in the last few years including changes occurring in 2003. In addition, the Motion and Supporting Brief included over 5,000 pages of affidavit evidence from Sandra Cano, over 1,000 affidavits of post-abortive women, and affidavits from scientific and medical experts.

7. On March 26, 2004, this Court issued its Order denying the Rule 60 Motion. The Order stated that the Rule 60 Motion does not require a three-judge court and that even with Plaintiff's evidence it could not overturn long-standing precedent.[10] In addition, the Court denied an evidentiary hearing and oral argument, for leave to file copies in lieu of originals, and for leave to file excess pages. Plaintiff is seeking reconsideration of all of these orders because this case is of extremely high national importance, it is complex and compelling by its very nature with over 5,000 pages of evidence, the case will likely go to the United States Supreme Court for review and should receive full consideration from this Court, and justice requires it.

8. This Court narrowly read §§ 2281 and 2284 and therefore found that a three-judge panel is not required for a Rule 60(b) Motion. In addition, the Court made no judgment as to either the importance or the veracity of the information proffered by the Plaintiff but concluded that the emergence of new scientific knowledge is not a sufficient reason to overturn long-standing precedent and legal

[10] Order Denying Rule 60(b) Motion at 5, 6 (March 26, 2004).

certainty. This Court recognized that it is not its place to overrule a United States Supreme Court decision as only the Supreme Court can overrule its own decisions.

9. This Motion for Reconsideration and its attached Supporting Brief respectfully seek reconsideration of these issues based on errors of law and facts and manifest injustice. The Court should have granted Plaintiff's Rule 60 Motion because:

(a) the Court circumvented the purpose of Rule 60(b) as the proper procedure by summarily denying the motion and finding that it could not overturn long-standing precedent and legal certainty;

(b) Plaintiff was denied basic due process by a denial of a hearing or failing to make any findings of fact on the extensive evidence;

(c) the Court should have granted the Motion based on the evidence because there was substantial evidence of change in factual and legal conditions to find that prospective application was unjust; and,

(d) a three-judge court was required, and therefore, the Rule 60 Motion should have been referred to a three-judge court;

10. The judgment should be vacated to prevent clear error of law and fact and manifest injustice.

11. Therefore, Plaintiff Sandra Cano respectfully prays for the following:

a. Grant this Motion for Reconsideration and set aside the Court's Order of March 26, 2004;

b. Grant the request for a three-judge panel;

c. Grant a hearing as requested in the Original Motion, or, in the alternative, provide findings of fact;

d. Grant Plaintiff's Rule 60 Motion based on the substantial accompanying evidence that to apply *Doe v. Bolton* in the future would be unjust and inequitable.

e. Grant leave to file copies in lieu of originals and for leave to file excess pages as this is a case of national importance.

Respectfully Submitted,

/s/ Terry L. Lloyd

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CERTIFICATE OF SERVICE

I, Terry L. Lloyd, hereby certify that I have served all other parties in this action with a copy of the foregoing pleading by first class mail to:

Honorable Thurbert E. Baker
Georgia Attorney General
40 Capitol Square, SW
Atlanta, GA 30334

Honorable Paul L. Howard, Jr.
District Attorney for Fulton County
136 Pryor Street, SW, 3rd Floor
Atlanta, GA 30303

Honorable Richard Pennington
Chief of Police of the City of Atlanta
675 Ponce de Leon, NW
Atlanta, GA 30308

SIGNED this the 8th day of April, 2004.

/s/ Terry L. Lloyd
Terry L. Lloyd, Local Counsel

CERTIFICATE OF COMPLIANCE WITH RULE LR 5.1B

1. This brief complies with the type-volume limitation of LR 5.1B because this brief was prepared in New Times Roman in at least 14 point.

2. This brief complies with the typeface requirements and the type style requirements of LR 5.1B because this brief has been prepared in a proportionally spaced typeface using Microsoft Word Version 97 in 14 point Times New Roman font.

SIGNED this the 8 day of April, 2004.

/s/ Terry L. Lloyd
Terry L. Lloyd, Local Counsel

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SANDRA CANO, formerly known as MARY DOE, Plaintiff, V. **ARTHUR BOLTON**, Attorney General of the State of Georgia Through His Official Successor in Office, **THURBERT E. BAKER; LEWIS R. SLATON**, as District Attorney of Fulton County, Georgia, Through His Official Successor In Office, **PAUL L. HOWARD, JR.**; And **HERBERT T. JENKINS**, as Chief of Police of the City of Atlanta, Through His Official Successor in Office, **RICHARD PENNINGTON**, Defendants.	§	CIVIL ACTION NO. 70-CV-13676

MEMORANDUM OF LAW SUPPORTING PLAINTIFFS MOTION FOR RECONSIDERATION AND TO AMEND ORDER DENYING RULE 60 MOTION

(Filed Apr. 09, 2004)

TO THE HONORABLE COURT:

NOW COMES, SANDRA CANO, formerly known in this Court as Mary Doe, the Plaintiff herein (hereinafter referred to as "Plaintiff"), and respectfully requests reconsideration of her Rule 60 Motion which was denied

on March 26, 2004 and files this memorandum of law in accordance with LR 7.1(A)(1). This Court narrowly read §§ 2281 and 2284 and therefore found that a three-judge panel is not required for a Rule 60(b) Motion. In addition, the Court made no judgment as to either the importance or the veracity of the information proffered by the Plaintiff but concluded that the emergence of new scientific knowledge is not a sufficient reason to overturn long-standing precedent and legal certainty. This Court stated that it is not its place to overrule a United States Supreme Court decision as only the Supreme Court can overrule its own decisions.

Pursuant to the Court's inherent equity power and Federal Rules of Civil Procedure, Rule 59(e), Plaintiff files this Motion to reconsider the Court's decision of March 26, 2004 in this case. Regardless of whether this Motion is referred to as a "Motion for Reconsideration" or a "Motion to Amend or Alter" the final Order of this Court, it is properly filed under Rule 59(e).[1] Plaintiff hereby makes this Motion within the ten-day deadline and seeks reconsideration on errors of law and fact and manifest injustice.[2] Plaintiff objects to the decision being made prior to the convening of a three-judge court and by this Motion does not waive her objection to her jurisdictional complaint.

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[1] Bass v. United States Dep't of Agriculture, 211 F.3d 959 (5th Cir. 2002); Wright v. Preferred Research, Inc., 891 F.2d 886 (11th Cir. 1990).

[2] Servants of Paraclete v. Does, 204 F.3d 1005, 1012 (10th Cir. 2000) (stating grounds for order under Rule 59(e) as the need to correct clear error or prevent manifest injustice).

FACTUAL HISTORY AND PROCEDURAL BACKGROUND

On April 16, 1970, Plaintiff Sandra Cano, then known to this Court as "Mary Doe," originally brought this action seeking a declaratory judgment that the Georgia abortion statute, Ga. Code §§ 26-1201-03 *et. seq.*, was unconstitutional and seeking injunctive relief against its enforcement. By opinion dated July 31, 1970, the judgment of a three-judge court as amended on October 13, 1970 was issued and declared that the portions of the Georgia abortion law allowing abortion only for the impairment of health of the woman, rape, or fetus malformation was unconstitutional.[3] On August 25, 1970, the judgment was filed and entered that the complaint of all parties except Mary Doe be dismissed and that certain sections of the Georgia Abortion Statute was void on its face for unconstitutional overbreadth. On January 22, 1973, the United States Supreme Court affirmed this Court's judgment.[4] On the same day, the United States Supreme Court also ruled in a companion case to *Doe, Roe v. Wade.*[5]

The existing and prospective application of this Court's judgment and its subsequent affirmation by the United States Supreme Court prevent the State of Georgia from enforcing or enacting laws protecting women and children by prohibiting abortion.

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[3] Doe v. Bolton, 319 F. Supp. 1048 (N.D. Ga. 1970) (hereinafter "*District Court Doe*").

[4] 410 U.S. 179 (1973) (hereinafter "*Doe*").

[5] Roe v. Wade, 410 U.S. 113 (1973) (hereinafter "*Roe*").

PARTIES

Plaintiff, Sandra Cano, formerly known in this Court as "Mary Doe," is the original Plaintiff herein, and an original party hereto.

Defendant, Arthur Bolton, is represented in this cause by and through his official successor in office, Thurbert E. Baker, Attorney General of the State of Georgia. Defendant Lewis R. Slaton is represented in this cause by and through his official successor in office, Paul L Howard, Jr., District Attorney of Fulton County, Georgia. Defendant Herbert T. Jenkins is represented in this cause by and through his official successor in office, Richard Pennington, Chief of Police of the City of Atlanta.

This Court determined that all the plaintiffs had standing but only Mary Doe had a justiciable controversy.[6] Therefore, this Court granted a motion to dismiss to that extent all other plaintiffs except Mary Doe.[7] A John and Mary Doe filed a companion complaint in *Roe v. Wade*, cause no. 3-3691-C, and the two actions were consolidated and heard together.[8] Dr. Hallford and the Does were held not to have standing by the United States Supreme Court.[9]

On August 25, 2003, Plaintiff filed a Rule 60 Motion for Relief from Judgment. That Motion included a request for a three-judge court, request for evidentiary hearing and oral argument, provided case law and authorities for

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[6] Doe v. Bolton, 319 F. Supp. 1048, 1053 (N.D. Ga. 1970).

[7] *Id.* at 1054. Therefore, they are no longer parties and have not been served.

[8] 410 U.S. at 121-22.

[9] 410 U.S. at 125-28.

its Motion, and detailed the changes in both legal and factual conditions that have occurred in the last few years including changes occurring in 2003. In addition, the Motion and Supporting Brief included over 5,000 pages of affidavit evidence from Sandra Cano, with over 1,000 affidavits of post-abortive women, and affidavits from scientific and medical experts.

On March 26, 2004, this Court issued its Order denying the Rule 60 Motion. The Order stated that the Rule 60 Motion does not require a three-judge court and that even with Plaintiff's evidence it could not overturn long-standing precedent.[10]

This Motion for Reconsideration respectfully seeks reconsideration of these issues based on errors of law and facts and manifest injustice. The Court should have granted Plaintiff's Rule 60 Motion because:

(a) the Court circumvented the purpose of Rule 60(b) as the proper procedure for modifying even Supreme Court opinions by summarily denying the motion and finding that it could not overturn long-standing precedent and legal certainty;

(b) Plaintiff was denied basic due process by a denial of a hearing or failing to make any findings of fact on the extensive evidence; and,

(c) the Court should have granted the Motion based on the evidence because there was substantial evidence of change in factual

[10] Order Denying Rule 60(b) Motion at 5, 6 (March 26, 2004).

and legal conditions to find that prospective application was unjust.

(d) the Court should have ruled that a three-judge court was required and referred it to that court.

RULE 60(b) IS THE PROPER PROCEDURE TO MODIFY OR VACATE EVEN SUPREME COURT PRECEDENTS

Plaintiff repeatedly cited the United States Supreme Court case of *Agostini v. Felton*[11] in her Rule 60 Motion with Supporting Brief because it is the lead case in Rule 60(b)(5) Motions that deal directly with overturning a Supreme Court decision. However, the Court did not even refer to this leading case in its opinion.

This Court took the position that "It is not the place of this district court, however, to take the extraordinary step of overruling a decision of the Supreme Court of the United States. Whenever Supreme Court precedent has direct application to a case, even if that precedent rests upon reasons that have been rejected or discredited by other cases, lower courts must still apply the controlling Supreme Court precedent."[12] In support of this proposition, the Court cited *Rodrigez de Quijas v. Shearson/American Express, Inc.*[13] which was a lawsuit by investors against the brokerage firm alleging unauthorized and fraudulent transactions in violation of the Securities Act. That case

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[11] Agostini v. Felton, 521 U.S. 203 (1997).

[12] Order Denying Rule 60(b) Motion at 8 (March 26, 2004).

[13] Rodrigez-de Quijas v. Shearson/American Express, Inc., 490 U.S. 477, 484 (1989).

was not a Rule 60(b)(5) case, and therefore, the underlying rationale for the Court's decision is not applicable. Instead, the *Agostini* case specifically deals with Rule 60(b)(5) Motions. It finds that it is "appropriate to grant a Rule 60(b)(5) motion when the party seeking relief . . . can show 'a significant change either in factual conditions or in law.'"[14] Plaintiff has demonstrated significant changes in *both* the factual and legal conditions, and therefore, it was an abuse of discretion to deny the Motion.

DUE PROCESS

Plaintiff asserts that there has been a violation of her fundamental due process rights to notice and an opportunity to be heard on the issues raised in her Rule 60 Motion. Plaintiff requested a full hearing on all of her evidence and all the issues in her Motion and submitted over 5,000 pages of evidence to support her Motion. However, this Court decided Plaintiff's Motion by summarily stating that "The court makes no judgment as to the importance or veracity of the information proffered by Plaintiff in support of her motion. The court finds, however, that the emergence of new scientific knowledge is not a sufficient basis to overturn long-standing precedent and legal certainty."[15]

It is the basic duty of a trial court to determine the importance and veracity of the evidence and to make findings of fact based upon that evidence. The Court abused its discretion by neither granting a hearing or

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[14] Agostini v. Felton, 521 U.S. 203 (1997) (*quoting* Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367, 384 (1992).

[15] Order Denying Rule 60(b) Motion at 6 (March 26, 2004).

making findings of fact and conclusions of law. Findings of fact could be made to assist the Supreme Court even if this Court feels constrained to follow Supreme Court precedent.

In addition, the Court did not reference the more than 1,000 affidavits from post abortive women which described the physical, psychological, and emotional injury which these women have suffered as a result of their abortions. Plaintiff asserts that there are significant differences between breast implants and the issues raised in her Rule 60 Motion.

Unlike breast implants, the courts have a special obligation to review scientific evidence on the humanity of children in the womb. By constitutionalizing the issue in *Roe v. Wade*, the courts have prevented state legislatures from responding to advances in scientific knowledge through the normal democratic process. The Court cited *Toole v. Baxter Healthcare Corp.*,[16] the Eleventh Circuit's decision in the breast implants litigation as foreclosing the review of new scientific evidence on the humanity of children in the womb. However, since the Supreme Court has not constitutionalized a woman's right to breast implants, even though it is her own body, and instead has allowed normal rules and regulations of medical practice to exist, state legislatures and medical boards are free to react to advances in scientific information by banning or regulating breast implants, by determining particular procedures to be used, by limiting product liability litigation, or increasing exposure for those who engage in breast implant surgery. On the contrary, because the Court

[16] Toole v. Baxter Healthcare Corp., 235 F.3d 1307 (11th Cir. 2000).

constitutionalized the woman's right to abortion in *Roe* and *Doe*, state legislatures are not free to react to the incredible advances in scientific and human knowledge since 1973 by re-evaluating society's position on abortion. It is therefore the special duty of the courts to review scientific advances because they have prevented the legislature from doing so. If not, society's position on abortion will be frozen in time with 1973 knowledge and evidence.

In addition, this Court, as well as the Supreme Court, has a special obligation to review evidence of the humanity of the child because that issue was expressly not decided in *Roe v. Wade*.[17] Plaintiff is not asking the Court to change its mind or to set aside an established principle of scientific fact that the Court found. Plaintiff requests that the Court acknowledge new scientific evidence that has pushed human knowledge almost to the beginning of life and creation itself. Such advances as The Human Genome Project, Recombinent DNA technology, DNA testing, and cloning are far beyond 1973's knowledge. The Supreme Court itself stated in *Roe v. Wade* that:

> We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer.[18]

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[17] Roe v. Wade, 410 U.S. 113, 159 (1973).

[18] *Id.*

Roe v. Wade and *Doe v. Bolton* did not settle this issue. Furthermore, this is a factual issue which requires a factual exposition so the Supreme Court can correctly apply constitutional law to new factual conditions. Therefore, this Court should view its role as helping the Supreme Court by making an extensive fact finding record either through a hearing or, in the alternative, findings of fact based on the affidavits, for the Supreme Court to review when it determines the Rule 60 motion.

Plaintiff respects the burden that is on the Court with a heavy docket, but this case is not dealing with breast implants – it is dealing with the potential murder of human beings and infanticide.[19] This is a matter of great national importance and division, even after all these years, because it touches the heart of life and human existence. Can it ever be too late or too inconvenient to re-examine the justice of infanticide? What was once thought not to be human is in fact a human being who deserves justice.

The Court's decision does not give any indication of consideration to the extreme agony and pain that abortion causes women other than a brief mention of the negative effects of abortion on women. Over 1,000 women were willing to come forward and tell this Court the most intimate and destructive episodes of their lives. There is

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[19] This Court recognizing that the "standards of decency held by a civilized society would permit no state in the union to execute the most heinous murderer utilizing the procedures of D&E and D&X." Midtown Hospital v. Miller, 36 F. Supp. 2d 1360, 1366 (N.D. Ga. 1997) (concerning partial birth abortions). This Court also concluded that "it seems clear to this court that there are six justices that, for different reasons, would support the rethinking of the former, more expansive jurisprudence set forth in Roe." *Id.* at 1365.

no indication that the Court considered any of these affidavits. *Roe v. Wade* and *Doe v. Bolton* were based on assumptions about the effects of abortion on women. Abortionists, not women, have brought all of the subsequent cases. Therefore, Plaintiff is not asking the Court to set aside factual findings or principles that the Supreme Court has already established. There is nothing in either *Roe v. Wade*,[20] *Doe v. Bolton*,[21] *or Planned Parenthood v. Casey*[22] where the Supreme Court indicates that it actually has considered evidence or understood the effect of abortion on women.

Since the Court has rejected Plaintiff's request for a hearing, an alternative request is made or that the Court make factual findings. Such findings would aid the Supreme Court in its eventual re-examination of *Roe v. Wade* and *Doe v. Bolton* when this case reaches the Supreme Court on *writ of certiorari.* The Supreme Court is an appellate court which does not make findings of fact.

On the other hand, this Court is uniquely qualified and mandated as a trier of facts to make a factual finding which it can make but the Supreme Court cannot. This Court may still follow *Roe v. Wade* and *Doe v. Bolton* if it feels that it is bound by the Supreme Court determinations, but it can make factual findings to aid the Supreme Court. This factual finding could be made separately or could be incorporated into an opinion that still denies the Rule 60 motion. Plaintiff is also willing to submit extensive proposed findings of fact based upon the affidavit

[20] Roe. V. Wade, 410 U.S. 113 (1973).

[21] Doe v. Bolton, 410 U.S. 179 (1973).

[22] Planned Parenthood v. Casey, 505 U.S. 833 (1992).

record. This would aid the Supreme Court when the matter reaches that level.

Plaintiff Sandra Cano feels personally betrayed by the court system as it continues to ignore her true feelings about abortion and simply uses her as a pawn to maintain a constitutional regime with which she deeply disagrees. She makes a personal appeal to the judge because she has such great and deep respect for him based upon his excellent handling of this case in 1988 when he unsealed her record and allowed her to prove to the world that she was Mary Doe of *Doe v. Bolton.*[23] She begs this Court for reconsideration and assistance in returning this matter to the Supreme Court in an appropriate procedural posture that will have the best chance of obtaining justice from the Supreme Court. Factual findings would increase the likelihood that the Supreme Court would grant her certiorari if a lower court has found facts to be true that could justify a reasonable person determining that *Doe v. Bolton* should be re-evaluated. She believes this is appropriate for a lower court. Factual findings would not take time away from the court's docket, would not usurp the Supreme Court's role as the final authority on constitutional matters, and would place this Court in the role of assisting rather than not following Supreme Court decisions.

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[23] On December 9, 1988, Plaintiff requested that this Court unseal the envelope attached to her complaint containing her true identity. On January 4, 1989, the envelope was unsealed establishing her correct name at the time was Sandra Kay Bensing. She is now Sandra Bensing Cano. *See* Doe v. Bolton, 126 F.R.D. 85, 86 (1989).

Evidentiary hearings are proper where it will assist the plaintiff as well as the appellate court.[24] A hearing would have given this Court the benefit of all the facts as well as the benefit to the appellate court in reviewing the case.

THE EVIDENCE PRESENTED WAS SUFFICIENT TO GRANT THE MOTION

In the alternative, Plaintiff asserts that this Court should have granted the Motion on its merits if the Court had jurisdiction as part of a three-judge court. The Motion, Supporting Brief, and over 5,000 pages of affidavits and expert testimony were sufficient to grant the Motion and vacate the original judgment as Plaintiff requested in her prayer for relief. It is not an abuse of discretion where "an evidentiary hearing was unnecessary in view of the detailed record . . ."[25] In this case, Plaintiff provided the most detailed information that any court has received on the issue. It included its Motion and Supporting Brief with over 5,000 pages of documentation.

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[24] Clarke v. Burkle, 570 F.2d 824 (8th Cir. 1978). The court explained: "We do not say that an evidentiary hearing in connection with the Rule 60(b) motion would necessarily have done the plaintiff any good. However, to have held the hearing would have consumed little time and effort, and in ruling upon the motion and amendments, the district court would have had the benefit of all of the facts, and we would have had the benefit of those facts in reviewing the action of the district court on appeal. In our opinion the action of the trial court in failing to hold a hearing legally amounted to an abuse of discretion, and we think that a hearing must now be held by the district court." *Id.* at 832.

[25] Gary W. v. State of Louisiana, 601 F.2d 240, 244 (5th Cir. 1979).

THREE-JUDGE COURT

Plaintiff agrees that the relevant provision is the pre-amendment version of 28 U.S.C. § 2284.[26] However, this Court ruled that "courts are to be cautious in granting requests for three-judge panels and narrowly interpret the statutes which authorize them."[27] Although the Court should be cautious, Plaintiff respectfully disagrees that it is inappropriate in this case and a "tremendous drain on resources" to reconvene the three-judge panel. The Court relied on *Wilson v. Gooding*[28] which was a habeas corpus case. The *Wilson* court rightly surmised that the number of applications for habeas corpus was rapidly increasing, and therefore, to "require a three-judge court for every case similar to the instant proceedings would place an unacceptable burden on the federal judiciary."[29] No such burden would exist in this case as *Doe v. Bolton* is a unique case, and therefore, the Court abused its discretion.

Section 2284 begins by indicating that "Any one of the three judges of the court may perform . . . " This presupposes that a three-judge court has been convened. In fact,

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[26] The pre-amended version of 28 U.S.C. § 2284 provides: "Any one of the three judges of the court may perform all functions, conduct all proceedings except the trial, and enter all orders required or permitted by the rules of civil procedure. A Single judge shall not appoint a master or order a reference, or hear and determine any application for interlocutory injunction or motion to vacate the same, or dismiss the action, or enter a summary or final judgment. The motion of the single judge shall be reviewable by the full court at any time before the final hearing."

[27] Order Denying Rule 60(b) Motion at 5 (March 24, 2004).

[28] Wilson v. Gooding, 431 F.2d 855 (5th Cir. 1970).

[29] *Id.* at 858.

a three-judge court had been convened in the original case of *Doe v. Bolton*. However, at the present time, all three of those judges are no longer sitting judges. Thus, it is necessary to reconvene a three-judge court as Plaintiff requested in her prayer. Because this was not done, a single judge who is not part of the three-judge court does not have jurisdiction.

Section 2284 also states that: "A single judge shall not . . . dismiss the action."[30] Plaintiffs Rule 60 Motion with Supporting Brief and over 5,000 pages of affidavits was denied without hearing or findings of fact. In effect, her action has now been dismissed. Plaintiff also respectfully submits that it was error to classify her Rule 60 Motion as "merely reopening a prior judgment."[31] The third request in Plaintiffs prayer was a request for "an order by the three-judge court that the judgment heretofore entered in favor of Plaintiff is vacated in light of changed legal and factual conditions because it is no longer just or equitable to give it prospective application."[32] This request sought final relief on the merits.

Section 2284 also requires that "[t]he action of a single judge shall be reviewable by the full court at any time before the final hearing." This is impossible since the request to reconvene the three-judge court was denied. There is no three-judge court before which Plaintiff can

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[30] 28 U.S.C. § 2284; *see also* Ex Parte Poresky, 290 U.S. 30 (1933); Police Officers' Guide v. Washington, 369 F. Supp. 543 (D.D.C. 1973); New Jersey Chiropractic Assoc. v. State Bd. Of Medical Examiners, 79 F. Supp. 327 (D.N.J. 1948); Collins v. Bolton, 287 F. Supp. 393 (N.D. Ill. 1968).

[31] Order Denying Rule 60(b) Motion at 5 (March 26, 2004).

[32] Plaintiff's Original Rule 60 Motion at 17.

now seek review. Accordingly, the requirements of § 2284 were not met, and therefore, this Court did not have jurisdiction to rule on the Motion and it was an abuse of discretion to deny the Motion.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff Sandra Cano respectfully prays for the following:

1. Grant this Motion for Reconsideration and set aside the Court's Order of March 26, 2004;

2. Grant the request for a three-judge panel;

3. Grant a hearing as requested in the Original Motion, or, in the alternative, provide findings of fact;

4. Grant Plaintiff's Rule 60 Motion based on the substantial accompanying evidence that to apply *Doe v. Bolton* in the future would be unjust and inequitable.

5. Grant leave to file copies in lieu of originals and for leave to file excess pages because this case is of extremely high national importance, it is complex and compelling by its very nature with over 5,000 pages of evidence, and the case will likely go to the United States Supreme Court for review.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

A true copy of the above and forgoing has been hand-delivered to: the Georgia Attorney General, Thurbert E. Baker, 40 Capitol Square, SW, Atlanta, GA 30334; the District Attorney for Fulton County, Paul L. Howard, Jr., 136 Pryor Street, SW, 3rd Floor, Atlanta, GA 30303; and, the Chief of Police of the City of Atlanta, Richard Pennington, 675 Ponce de Leon, NW, Atlanta, GA 30308.

SIGNED this the 8th day of April, 2004.

/s/ Terry L. Lloyd
Terry L. Lloyd,
Local Counsel

CERTIFICATE OF COMPLIANCE WITH RULE LR 5.1B

1. This brief complies with the type-volume limitation of LR 5.1B because this brief was prepared in New Times Roman in at least 14 point.

2. This brief complies with the typeface requirements and the type style requirements of LR 5.1B because this brief has been prepared in a proportionally spaced typeface using Microsoft Word Version 97 in 14 point Times New Roman font.

SIGNED this the 8th day of April, 2004.

/s/ Terry L. Lloyd
Terry L. Lloyd,
Local Counsel

No. 05-11641

IN THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

SANDRA CANO, formerly known as MARY DOE,
Plaintiff-Appellant

v.

THURBERT E. BAKER, Attorney General of Georgia, PAUL L. HOWARD, JR., District Attorney of Fulton County, Georgia RICHARD PENNINGTON, Chief of Policy of the City of Atlanta,
Defendant-Appellee.

On Appeal from the United States District Court
For the Northern District of Georgia

PETITION FOR REHEARING EN BANC

(Filed Jan. 31, 2006)

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No. 05-11641
Cano v. Baker

CERTIFICATE OF INTERESTED PERSONS

Pursuant to Eleventh Circuit Rule 26.1-1, the undersigned counsel of record certifies that the following persons and entities listed in alphabetical order have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

Trial Judge:

J. Owen Forrester

Plaintiff-Appellant:

Sandra Cano

Plaintiff-Appellant Represented by:

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/s/ Allan E. Parker, Jr.
Allan E. Parker, Jr.
Lead Counsel

STATEMENT OF COUNSEL

I express a belief, based on a reasoned and studied professional judgment, that the Panel decision is contrary to the Supreme Court of the United States decision in *Agostini v. Felton*, 521 U.S. 203 (1997).

I further express a belief, based on a reasoned and studied professional judgment, that this appeal involves one or more questions of exceptional importance. This case

in itself is one of national importance. The Panel incorrectly stated its authority and role in a Rule 60 case which detrimentally affects this case and other Rule 60 cases.

/s/ Allan E. Parker, Jr.
Allan E. Parker, Jr.
Attorney of Record for
Sandra Cano, Appellant

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STATEMENT OF ISSUES MERITING EN BANC CONSIDERATION

TO THE HONORABLE COURT:

SANDRA CANO, formerly known in this Court as Mary Doe of *Doe v. Bolton*, the Plaintiff-Appellant (hereinafter referred to as "Cano") respectfully requests a rehearing en banc of her Rule 60 Motion which was denied on January 11, 2006. The Panel concluded that because neither the district nor appellate court can overrule *Roe v. Wade* or *Doe v. Bolton*, there was no reason for the district court to hold a hearing. A district court must prepare the case for the Supreme Court to determine whether changed factual and legal conditions warrant reversal of a major Supreme Court decision.

Two issues are presented for rehearing:

1. Did the Panel err in determining it had no authority or role in a Rule 60 Motion dealing with a Supreme Court precedent of national importance?

2. Did the Panel err in failing to order the district court to conduct a hearing and to create a proper record for review by the Supreme Court specifically in a Rule 60 case?

Pursuant to FED. R. APP. P. 35, Cano files this Petition for Rehearing En Banc. This case involves questions of exceptional national importance due to the changed legal and factual conditions that show *Roe v. Wade*[1] and *Doe v. Bolton*[2] are no longer just and harm women all across this

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[1] *Roe v. Wade*, 410 U.S. 113, 93 S. Ct. 705 (1973).

[2] *Doe v. Bolton*, 410 U.S. 179, 93 S. Ct. 739 (1973).

nation. As Judge Jones of the Court of Appeals for the Fifth Circuit correctly states in *McCorvey v. Hill*:

> In sum, if courts were to delve into the facts underlying *Roe*'s balancing scheme with present-day knowledge, they might conclude that the woman's "choice" is far more risky and less beneficial, and the child's sentience far more advanced, than the *Roe* court knew.[3]

Judge Jones went on to say:

> At the same time, *because the Court's rulings have rendered basic abortion policy beyond the power of our legislative bodies*, the arms of representative government may not meaningfully debate McCorvey's evidence. The perverse result of the Court's having determined through constitutional adjudication this fundamental social policy, which affects over a million women and unborn babies each year, is that the facts no longer matter.[4]

Judge Jones concludes:

> One may fervently hope that the Court will someday acknowledge such developments and re-evaluate *Roe* and *Casey* accordingly. That the Court's constitutional decision making leaves our nation in a position of willful blindness to evolving knowledge should trouble any dispassionate observer . . .[5]

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[3] *McCorvey v. Hill*, 385 F.3d 846, 852 (5th Cir. 2004) (Jones, J. concurring).

[4] *Id.* (emphasis added)

[5] *Id.* at 853.

In this case of exceptional national importance affecting over a million women and unborn babies each year, no meaningful discussion of the evidence has occurred because Cano's Rule 60 Motion was denied. The Panel and district court believe there is no responsibility for holding a hearing to test the evidence and make findings of fact and conclusions of law for the Supreme Court to make its decision under Rule 60. Because the Supreme Court is not a fact-finder, it must rely upon the district court to fulfill its role so that it can make such a decision. More so than any other type of case, the Rule 60 Motion is dependent upon the district court preparing the case for review because the Supreme Court cannot fulfill that role and is not a fact-finder. Although the Panel believed a hearing would not have aided it in its decision, proper preparation of this case is critical for the Supreme Court in making its decision. There may very well be no other avenue within our judicial or legislative system to reconsider the incredibly important legal, societal, and moral issues raised by this case.

Since Cano's Rule 60 Motion was filed, the South Dakota Task Force to Study Abortion issued its report in December 2005 after conducting extensive hearings on the medical, societal, economic, and legal impact of abortion.[6] The Task Force concluded:

> The State of South Dakota has an interest and a duty to protect every citizen's intrinsic rights, most importantly the right to life. This duty includes protecting an unborn child's intrinsic right

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[6] *See* Report of the South Dakota Task Force to Study Abortion (Dec. 2005) which is attached at Appendix B.

> to life and *the mother's natural intrinsic right to a relationship with her child, along with the protection of the mother's health.* The Task Force concludes that to fully protect the rights, interests, and health of the mother and the life of her unborn child, a ban on abortions is required. We recommend that the Legislature examine the method and timing of such a ban."[7]

Cano believes this is the first time since 1973 that a legislative task force has reviewed all of the evidence from both sides including almost 2,000 sworn affidavits from post-abortive women and live testimony from women that abortion hurts women. Based on the changed factual and legal conditions, the South Dakota Task Force believes abortion should be banned which shows the exceptional importance of this case on its way to the Supreme Court.

STATEMENT OF THE COURSE OF PROCEEDINGS AND DISPOSITION OF THE CASE

On October 13, 1970, a three-judge court declared certain portions of the Georgia abortion law allowing abortion only for the impairment of health of the woman, rape, or fetus malformation unconstitutional.[8] On January 22, 1973, the United States Supreme Court affirmed.[9]

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[7] *Id.* at 69 (footnote omitted) (emphasis added).

[8] *Doe v. Bolton*, 319 F. Supp. 1048 (N.D. Ga. 1970) (hereinafter "District Court Doe").

[9] *Doe v. Bolton*, 410 U.S. 179 (1973) (hereinafter "Doe").

On August 25, 2003, Cano filed a Rule 60 Motion for Relief from Judgment based on *Agostini v. Felton*[10] and presented over 5,000 pages of sworn, uncontroverted evidence in support of the Motion and the changed factual and legal conditions. On September 8, 2003, the Attorney General filed a Response based on procedural challenges which the district court did not sustain. On March 26, 2004, the district court issued its Order and denied the Rule 60 Motion. On April 9, 2004, Cano filed a Motion for Reconsideration based on errors of law and facts and manifest injustice. The district court denied the Motion for Reconsideration on February 23, 2005.

An appeal was timely filed with this Court on March 23, 2005. Cano argued that the district court abused its discretion because: (a) it misapplied the standard articulated in *Agostini v. Felton*;[11] and, (b) it did not grant an evidentiary hearing; or, (c) grant the motion considering the significant changes in the factual and legal conditions since *Doe v. Bolton* was decided.

On January 11, 2006, the Panel of Judges Anderson, Hull, and Roney affirmed the district court and held that (a) Cano had timely filed the appeal and the Panel had jurisdiction to review the Rule 60(b) Motion[12] (b) there was no reversible error by denying a request for the three-judge court;[13] (c) there was no abuse of discretion in denying relief

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[10] 521 U.S. 203, 117 S. Ct. 1997 (1997).

[11] *Id.*

[12] Panel Opinion at 7 (January 11, 2006) which is attached as Appendix A.

[13] Panel Opinion at 7 (January 11, 2006).

under Rule 60(b)(5) and (b)(6)[14] because the Panel stated neither the district court or the Panel had authority to reverse the Supreme Court's decisions in *Doe* or *Roe*;[15] and, (d) there was no abuse of discretion in denying the request for an evidentiary hearing and to make specific findings of fact.[16] The Panel did not address the issue of whether over 5,000 pages of sworn, uncontroverted evidence was legally sufficient to compel granting the Motion.

STATEMENT OF FACTS

Cano presented over 5,000 pages of sworn, uncontroverted evidence of substantial changes in factual and legal conditions which demonstrate that *Doe* is no longer just. In her Rule 60 Motion, Cano presented evidence of changed factual conditions including the psychological[17] and physical[18] effects or abortion. In addition, Cano

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[14] Panel Opinion at 8 (January 11, 2006).

[15] Panel Opinion at 10 (January 11, 2006).

[16] Panel Opinion at 10 (January 11, 2006).

[17] For example, women are overwhelmed with the guilt and depression of abortion for years after having an abortion. In the over 1,000 Women's Affidavits, post-abortive women were asked: "How has your abortion affected you?" (R. 000013-001705). The women's responses show the Court the devastation caused by their abortions. The Affidavit of Dr. David Reardon, who has done years of research regarding the effects of abortion on women, and the Affidavit of Dr. Theresa Burke, a clinical psychotherapist who has counseled hundreds of post-abortive women, further demonstrate the devastating psychological consequences of abortion. (R. 001723-004515).

[18] Abortion has also had negative physical effects on women. (R. 000013-001705). As the Women's Affidavits and the scientific evidence demonstrates, there are many physical complications that can result from abortion. These complications include but, are not limited to: increased bleeding in subsequent pregnancies, infertility, miscarriages, increased risk of breast cancer, tubal or ectopic pregnancy, prematurity,

(Continued on following page)

presented evidence of changed legal conditions which have even occurred since the Panel decision.[19] Her Rule 60 Motion was supported by over 5,000 pages of sworn, uncontroverted evidence which Appellee never refuted and the Panel assumed was true.

ARGUMENT

I. THE PANEL, ERRED AND THE DISTRICT COURT ABUSED ITS DISCRETION IN DETERMINING THAT IT HAD NO AUTHORITY IN A RULE 60 MOTION BECAUSE THE PLAIN LANGUAGE OF THE RULE GRANTS AUTHORITY.

The Panel ignored the plain language of Rule 60 which states: "On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding . . . " when

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pelvic inflammatory disease, uterine perforations, increased risk of breast cancer, placenta previa, and retention of placenta increased in subsequent pregnancies. Complications from all types of abortions, as described in the GALE ENCYCLOPEDIA OF MEDICINE, include "uncontrolled bleeding, infection, blood clots accumulating in the uterus, a tear in the cervix or uterus, missed abortion where the pregnancy continues, and incomplete abortion where some material from the pregnancy remains in the uterus." All of these complications are not only hazardous to the immediate well being of the mother, but they can also have lasting effects on her health and the health of her subsequent children.

[19] Cano outlined the changes in the law of federalism as articulated by the Supreme Court. This change continues in even the Court's most recent pronouncement since the Panel decision in *Gonzales v. Oregon*, 546 U.S. ___, ___ S. Ct. ___ (2006) (supporting state's right to practice medicine involving the choice to intentionally take human life). Cano also noted the changes in the legal conditions with forty-six states passing "Baby Moses" laws since 1999 whereby the state will care for the child without the mother facing prosecution for abandonment.

it is no longer equitable or just to give the judgment prospective application.

Cano filed a motion as required by Rule 60 because there are significantly changed factual and legal conditions which make it no longer equitable or just to give the judgment prospective application. These were described in detail in her original Motion. As Rule 60 states, the measuring line is justice. Therefore, the courts should be concerned about justice and Rule 60 provides an opportunity to prevent injustice by vacating or modifying a judgment which is no longer equitable or just. Cano urged both the district court and the Panel to do justice.

Cano is a party. Although the Panel noted the fact that in 1973 Cano was the prevailing party, the Panel ignored the plain language of Rule 60 that simply states "a party" make a motion.[20] The Rule itself does not draw a distinction between prevailing and losing parties. Although intuitively, one might expect that it usually would be the losing party, Rule 60 does not require or state that it must be the losing party. In fact, in the case of consent decrees, courts frequently relieve such parties from their own agreement even though technically there is no prevailing or losing party because they have agreed to a judgment.[21] Circumstances may change so significantly that a plaintiff or defendant may want to change the judgment or consent decree.

Cano is seeking relief from judgment. The Panel, using Webster's Third New International Dictionary,

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[20] Panel opinion at 3 (January 11, 2006).

[21] *See Rufo v. Inmates of the Suffolk County Jail*, 502 U.S. 367, 112 S. Ct. 748 (1992).

defined the word "relieve" as "to ease the imposition, burden, wrong, or oppression, by a judicial or legislative interposition."[22]

Cano has personally experienced the "imposition" and "burden" of the judgment. She has felt the guilt and shame that her case was used to bring abortion on demand and the horrific partial birth abortion procedure. The judgment continues to cause the "wrong" and "oppression" of over one million babies dying each year as a result of abortion and the severe physical, emotional, and psychological consequences that face post-abortive women. Although Cano presented over 5,000 pages of evidence of the severe negative effects of abortion, there was no evidence presented by Appellee to the contrary. Thus, it is also remarkable that the party presenting the only evidence – not just the overwhelming weight of evidence – does not prevail.

Justice demands relief from judgment for Cano as well as the women and babies because the very nature of an injunction mandates continued imposition, burden, wrong, and oppression by a judicial interposition by failing to protect women and children. Unlike the cases cited by the Panel where there can be finality between private parties in a car accident or consent decree cases, there is no finality here. *Roe v. Wade* and *Doe v. Bolton* continue to affect millions of women each year with a continuing injunction-like order causing severe and ongoing injury to women. Finality should not outweigh the severe physical and psychological harm that abortion causes to women.

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[22] Panel Opinion at 3 (January 11, 2006).

Finally, the Panel erred and the district court abused its discretion in misinterpreting its authority under Rule 60 because it was a final judgment of the Supreme Court. In *Agostini,* the moving party "lost" at both the district and appellate levels.[23] But the lower courts recognized that the petitioners had sought a "procedurally sound vehicle" to get the case back to the Supreme Court and that the law had changed.[24] However, the Supreme Court had a proper record to determine whether there had been significant changed factual and legal conditions.[25] The Supreme Court recognized that a court errs when it refuses to vacate or modify a judgment when there have been significant changes in either the factual or legal conditions.[26] The Supreme Court also stated that "We see no reason to wait for a 'better vehicle' . . . "[27]

To apply the Panel's rationale places Cano in a "catch 22." On the one hand, the Panel bases its conclusion on the fact that only the Supreme Court can reverse its own decision. But on the other hand, in order for the Supreme Court to reverse its decision, it needs a properly developed evidentiary record upon which to base a ruling that there have been changed factual conditions and legal conditions. If Rule 60 did not provide for the lower courts to modify or vacate judgments, then there would be no way for a party to seek relief from the Supreme Court. The Supreme Court is not a fact-finder nor can it make a decision without a proper record. Therefore, it is dependent upon the lower courts to fulfill their roles.

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[23] *Agostini v. Felton,* 521 U.S. 203, 214, 117 S. Ct. 1997, 2006 (1997).

[24] *Id.*

[25] *Id.* at 234.

[26] *Id.* at 215.

[27] *Id.* at 239.

II. THE PANEL, ERRED AND THE DISTRICT COURT ABUSED ITS DISCRETION IN DETERMINING THAT IT HAD NO ROLE IN THE RULE 60 MOTION BECAUSE THE PROPER ROLE OF THE DISTRICT COURT IS TO CONDUCT HEARINGS, HEAR EVIDENCE, AND MAKE FINDINGS OF FACT AND CONCLUSIONS OF LAW WHICH PREPARES THE CASE SO THAT THE SUPREME COURT CAN DETERMINE WHETHER THERE ARE CHANGED FACTUAL AND LEGAL CONDITIONS WHICH WARRANT REVERSAL.

Cano contends that the district court should have either granted the Motion based on the sworn, uncontroverted evidence or granted an evidentiary hearing to fulfill its role as a fact-finder. The Panel erred and the district court abused its discretion because they concluded that the district court had no role to play. Both the district court and the Panel denied Cano's Rule 60(b) Motion citing only part of the *Agostini* decision to the effect that "only the Supreme Court may overrule its own precedent."[28] However, the Panel did not mention the Supreme Court's further guidance that such evidence is critical to the threshold issue of whether the "factual or legal landscape has changed."[29] In addition, the Panel did not even mention or

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[28] Order Denying Motion for Reconsideration of Rule 60(b) Motion at 6 (February 23, 2005) and Panel Opinion at 10 (January 11, 2006).

[29] The Supreme Court stated: "Obviously, if neither the law supporting our original decision in this litigation nor the facts have changed, there would be no need to decide the propriety of a Rule 60(b)(5) Motion. Accordingly, we turn to the threshold issue whether the factual or legal landscape has changed since we decided *Aguilar*." *Agostini*, 521 U.S. at 216, 117 S. Ct. at 2007.

distinguish the authorities that Cano cited that supported having a hearing.

The proper role of the district court is to conduct hearings, weigh evidence, and make findings of fact and conclusions of law which thereby prepares the case so that the Supreme Court can base its legal review on a judicial determination of changed factual and legal conditions. Because of the nature of a Rule 60 motion, a judgment can only be vacated or set aside after a proper hearing.[30] Under Rule 60(b)(6), which Cano also pled, an evidentiary hearing is required or the case must be reversed and remanded.[31] "To determine whether extraordinary circumstances exist, a full hearing must be held by the trial court, the parties must be given the opportunity to produce their witnesses," and the court "must render findings of fact and conclusions of law."[32] "Obviously such a determination could only be made

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[30] *Chance v. Board of Examiners,* 561 F.2d 1079, 1086 (2d Cir. 1977) (stating "some form of hearing is generally required to make so vital a determination" in modifying a decree and relying on Rule 60(b)(5) provision). *United States v. United Shoe Corp.,* 391 U.S. 244, 88 S. Ct. 1496 (1968) (conducting a hearing to decide whether to modify the decree based on specific facts and circumstances that were presented); *United States v. Swift & Co.,* 286 U.S. 106, 52 S. Ct. 460 (1932) (seeking modification of a decree as conditions in the packing industry and sale of groceries had been transformed so completely that the decree of 1920 was "useless and oppressive" and suspending the decree until a "full hearing on the merits"). *See generally* Annotation, *Judgment Relief - FRCP 60(b)(5),* 117 A.L.R. Fed. 419, 439 at § 2 (1994) (recognizing some form of hearing is generally required to make the determination that relief from judgment should be granted under Rule 60(b)(5) because of inequitable prospective application); 35B C.J.S. *Federal Civil Procedure* § 1266 (2003) (stating the need for a proper hearing and to be heard).

[31] *In re Estate of Sewer,* 332 F. Supp. 2d 817, 827 (D. V. I. 2004).

[32] *A.P. v. Gov't of the Virgin Islands,* 961 F. Supp. 122, 125 (D. V.I. App. Div. 1997).

after a full hearing" where the parties can produce their witnesses.[33] Furthermore, where issues are raised by the motion and answer, the judge is required to resolve them by receiving evidence and making full findings of fact and conclusions of law.[34]

Furthermore, where Cano makes at least a prima facie showing through the affidavit evidence, then an evidentiary hearing should be scheduled.[35] The showing consists of the significant changes that have occurred and that inequitable consequences will result if modifications are not made.[36] In the present case, Cano presented substantial and compelling evidence of the changed factual and legal conditions that have occurred since 1973. In addition, she presented over 1,000 affidavits from post-abortive women concerning the serious physical, emotional, and psychological consequences of abortion as well as voluminous scientific and medical evidence. All of this evidence comprised over 5,000 pages of sworn affidavit testimony. This certainly established a prima facie showing, particularly considering Appellee presented no evidence whatsoever. The Panel referred to the *Toole* case concerning "new scientific evidence,"[37] but Cano's Rule 60 Motion is not based on either "new evidence" or only "scientific" evidence. The basis of Cano's Rule 60 Motion is changed factual and legal conditions. The Panel correctly

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[33] *F.D.I.C. v. Alker*, 234 F.2d 113, 117 (3rd Cir. 1956).

[34] *Id.*

[35] *See Florida Women's Medical Clinic, Inc. v. Smith*, 746 F. Supp. 89, 90 (S.D. Fla. 1990).

[36] *Id.*

[37] Panel Opinion at 10 (January 11, 2006) (*citing Toole v. Baxter Healthcare Corp.*, 235 F.3d 1307 (11th Cir. 2000).

recognized that with the passage of time, there would be changes in the scientific, factual, or legal landscape.[38]

The role of the district court is to make factual determinations and Cano is merely requesting that the district court perform its duty to act as a fact-finder. For example, this was the way that the Supreme Court determined in *Agostini* that the factual situation had not changed significantly from the time of the original injunction based on a fact record developed at the trial court level.[39] This Court has recognized that "[t]he trial judge's major role is the determination of fact . . . "[40] The Supreme Court, as an appellate Court, cannot conduct a trial to determine if factual conditions have changed, and therefore, it is dependent upon the district court to fulfill that role. Here, Cano likewise seeks to develop the fact record by presenting her abundant evidence on various factual and legal aspects of her case. Cano also outlined the various factual and legal issues upon which the district court would need to make findings of fact and conclusions of law.

CONCLUSION AND PRAYER

As the record now establishes in light of the serious physical, emotional, and psychological harm that women

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[38] Panel Opinion at 9-10 (January 11, 2006).

[39] *Agostini*, 521 U.S. at 216, 117 S. Ct. at 2007. The *Agostini* Court stated: "We agree with Respondents that Petitioners have failed to establish the significant change in factual conditions required by *Rufo*. Both Petitioners and this Court were, at the time *Aguilar* was decided, aware that additional costs would be incurred if Title I services could not be provided in parochial school classrooms." *Id.*

[40] *Steelmet, Inc. v. Caribe Towing Corp.*, 842 F.2d 1237, 1240 n. 1 (11th Cir. 1988).

suffer as a result of abortion, Cano's evidence should be heard and the district court should fulfill its role in making findings of fact and conclusions of law so that the United States Supreme Court, as an appellate court, can make its determination of whether the judgment should be modified or vacated in light of changed factual and legal conditions. WHEREFORE, PREMISES CONSIDERED, Appellant Sandra Cano respectfully prays for the following:

1. Grant this Motion for Rehearing and reverse the district court's Order of March 26, 2004 and February 23, 2005 and the Panel's order of January 11, 2006;

2. Remand for a hearing as requested in the Original Motion, or, in the alternative,

3. Grant Appellant's Rule 60 Motion based on the significant changed factual and legal conditions that make the prospective application of *Doe v. Bolton* unjust and inequitable.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

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SIGNED on this the 30th day of January, 2006.

/s/ Allan E. Parker
Allan E. Parker, Jr.

CERTIFICATE OF COMPLIANCE

1. This Petition complies with the type-volume limitation of FED R. APP. P. 32(a)(7) because it is within fifteen pages excluding the parts of the Petition exempted by FED. R. APP. P. 32(a)(7)(B)(iii).

2. This Petition complies with the typeface requirements of FED. R. APP. P. 32(a)(5) and the type style requirements of FED. R. APP. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2003 in 14 point Times New Roman font.

SIGNED this the 30th day of January, 2006.

/s/ Allan E. Parker
Allan E. Parker, Jr.
Lead Counsel

REPORT
OF
THE SOUTH DAKOTA TASK FORCE TO STUDY ABORTION

SUBMITTED TO THE GOVERNOR
AND LEGISLATURE OF SOUTH DAKOTA

DECEMBER 2005

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I. INTRODUCTION

During the 2005 legislative session an overwhelming majority of the Legislature voted to create the South Dakota Task Force to Study Abortion. The Act, House Bill 1233, passed by a vote of 63 to 4 in the House and 28 to 6 in the Senate, and was signed into law by Governor Michael Rounds on March 22, 2005.

A. The Legislative History And The Reasons For The Creation Of The Task Force

The State Affairs Committee of the South Dakota House of Representatives held a public hearing in February, 2005, concerning House Bill 1233. The Committee heard testimony and took evidence relating to the bill and its companion bill, House Bill 1166. HB 1166, which was also passed by large majorities in both chambers, and also signed into law on March 22, 2005, provided for significant amendments to South Dakota's Abortion Informed Consent Statute. The State Affairs Committee of the South Dakota Senate held a single hearing on both bills.

The committees in both the House and Senate heard evidence concerning the magnitude of the interests and rights of pregnant mothers who were adversely affected by abortion. They heard testimony from a number of women

who had undergone abortions and who testified how they became depressed and were haunted by suicidal ideation. In every instance they testified about the magnitude of their loss and how that loss adversely affected their lives once they understood that the procedure terminated the life of their existing offspring.

Those who had counseled a large number of women before and after abortions corroborated the testimony of these women. The picture that emerged from the record before both the House and Senate committees was that it was common for women to sign consents for abortion without being truly informed. Many women reported that they were pressured into having an abortion, often by the father of their child, but by others as well. They typically did not understand that the procedure would terminate the life of a human being, and this lack of understanding was further complicated by the fact that abortion providers had misled them at the time of the abortion. The providers told them that there was "nothing but tissue" inside of them. Many of the women testified or reported to post-abortion counselors that if they had been given accurate information, they would not have submitted to the abortion. Their feeling that abortion providers had misled them compounded their sense of loss, adding to their depression, which often followed the mothers' realization that they were implicated in the death of their own child.

One woman testified before the Legislature that by withholding the truth that her abortion terminated the life of a human being:

> "the policy underlying abortion is a lie. First and foremost, because it denies the essential benefit of motherhood. It tells us that we are not forfeiting anything of value for ourselves. We are told

> we lost nothing, nothing of value. The truth is that the loss is massive. Massive and life altering. Your House Bill 1166 provides an important and essential message that the pregnant mother does have a great benefit, that her child already exists and that she has this existing relationship with her child, and that she has a great fundamental and constitutional right to that relationship, all of which she is giving up, all of which is lost as a result of the abortion . . . If I had been given this information, I would never had had an abortion."

In passing HB 1166 and the companion bill, HB 1233, which created the South Dakota Task Force to Study Abortion, the Legislature made certain findings that are contained in HB 1166. The Legislature found that as a matter of scientific fact an abortion terminates the life of a whole separate unique living human being.

In addition, the Legislature, in explaining the reasons for adopting HB 1166 (reasons which also formed the basis and inspiration for the creation of the Task Force), found:

> Section 3. The Legislature finds that pregnant women contemplating the termination of their right to their relationship with their unborn children, including women contemplating such termination by an abortion procedure, are faced with making a profound decision most often under stress and pressures from circumstances and from other persons, and that there exists a need for special protection of the rights of such pregnant women, and that the State of South Dakota has a compelling interest in providing such protection.

Moved by the testimony that evidenced a need for the Legislature to act to protect the rights, interests, and

health of pregnant mothers in South Dakota, the Legislature enacted HB 1233 and created the South Dakota Task Force to Study Abortion.

B. The Nature And Scope Of The Mandate Of House Bill 1233

The Act creating the Task Force specifically set out the scope of the inquiry to be conducted by the Task Force. It directed the Task Force to study:

A. the practice of abortion since its legalization,

B. the body of knowledge concerning the development and behavior of the unborn child which has developed because of technological advances and medical experience since the legalization of abortion,

C. the societal, economic, and ethical impact and effects of legalized abortion,

D. the degree to which decisions to undergo abortions are voluntary and informed,

E. the effect and health risks that undergoing abortions has on the women, including the effects on the women's physical and mental health, including the delayed onset of cancer, and her subsequent life and socioeconomic experiences,

F. the nature of the relationship between a pregnant woman and her unborn child,

G. whether abortion is a workable method for the pregnant woman to waive her rights to a relationship with the child,

H. whether the unborn child is capable of experiencing physical pain,

I. whether the need exists for additional protections of the rights of pregnant women contemplating abortion, and

J. whether there is any interest of the state or the mother or the child which would justify changing the laws relative to abortion.

The Act stated that the Task Force shall prepare a report detailing its findings, which shall include any proposals for additional legislation that the Task Force deemed advisable.[1]

Pursuant to the Act, Governor Michael Rounds appointed Dr. Marty Allison, Dr. Maria Bell, Mr. Travis Benson, J.D., Dr. Allen Unruh, and Dr. David Wachs to the Task Force; Representative Matt Michels, Speaker of the House, appointed Mr. David Day, J.D., Ms. Linda Holcomb, Representative Roger Hunt, Representative Elizabeth Kraus, Ms. Kate Looby, and Representative Kathy Miles; and Senator Lee Schoenbeck, President Pro Tempore of the Senate, appointed Senator Stanford Adelstein, Senator Julie Bartling, Senator Jay Duenwald, Senator Brock Greenfield, Dr. John Stransky, and Senator Theresa Two Bulls.

C. Task Force Hearings And Information Gathering

The South Dakota Task Force to Study Abortion (the "Task Force") initially met on August 1, 2005. On that date the Task Force heard a number of presentations and set

[1] A copy of HB 1233 is attached to this repoprt as Exhibit A.

protocol for scheduling witnesses, receiving written testimony and documents, and scheduling subsequent hearing dates.

Thereafter, the Task Force held four full days of hearings on September 21 and 22, 2005 and October 20 and 21, 2005. The Task Force heard live testimony of approximately fifty-five witnesses, including thirty-two experts, and considered the written reports and testimony from another fifteen experts. In order to achieve a balanced viewpoint and obtain as much information from diverse points of view as possible, live testimony was divided almost equally between witnesses who support the position that abortion is harmful to women and should be illegal and those who think it should be legal.

The Task Force also received approximately 3,500 pages of written materials, studies, reports, and testimony, all of which were made part of the record and have been reviewed and considered by the Task Force in reaching its findings, conclusions, and recommendations. Although the Task Force aggressively sought such contributions from all perspectives, this evidence was overwhelmingly in support of protecting life and preventing harm to women caused by abortion.

- Of significance, close to 2,000 women who have had abortions provided statements detailing their experiences, trauma, and the impact abortion has had on their lives. Of these post abortive women, over 99% of them testified that abortion is destructive of the rights, interests, and health of women and that abortion should not be legal.

In reviewing this testimony from women who had abortions in South Dakota, as well as in many other parts

of the country, a pattern of shared experiences and trauma and a common sense of loss emerge.

II. FINDINGS OF THE TASK FORCE

A. The Practice Of Abortion Since Its Legalization

In 1973, the United States Supreme Court issued its opinion in *Roe v. Wade,* 410 U.S. 113, the decision that legalized abortion in our country. At that time, our nation had no experience of any significant duration or extent with legal abortion from which reliable judgments or conclusions could be reached about how legalized abortion would affect the lives, interests, rights, and health of women.

Dr. John Wilke, MD, the former president of National Right to Life, testified before the Task Force and explained how virtually all of the careful analysis and policy-making of the Legislatures in various states was abruptly swept away by the *Roe* decision. In doing so, the *Roe* decision, and many of the subsequent cases following *Roe,* were based on a number of assumptions about the nature of the abortion procedure, the physician-patient relationship, the decisions women seeking abortions made, the safety of the abortion procedure, and other important matters relating to the interests of the women.

At the time the *Roe* Court made these various assumptions, the Court did not have the benefit of the current knowledge of science and medicine or the information obtained from the experience of women who have undergone abortions over the past thirty years. Since *Roe,* approximately 43 to 45 million abortions have taken place

throughout the United States, including, in recent years, approximately 820 abortions per year in South Dakota.

Through the knowledge gained from the advances in science and medicine over the past thirty years, and as evidenced in the testimony of women who have experienced legalized abortion, it is clear that the most essential assumptions made by the *Roe* Court are incorrect, to the detriment of the women subjected to the procedure.

1. The Incorrect Assumptions of the *Roe v. Wade* Decision

Specifically, six different assumptions of fact were made that were critical to the *Roe* decision that the states lacked an interest sufficient to prohibit or meaningfully regulate the abortion procedure. We address them one at a time:

First, the Supreme Court assumed that it could not determine the answer to the question of when the life of a human being begins:

> "When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, *at this point in the development of man's knowledge,* is not in a position to speculate as to the answer." (*Roe v. Wade,* 410 U.S. at 159) (emphasis added).

Thus, the Supreme Court did not affirm, but neither did it deny, that the "unborn child" (what embryologists call the "embryo" or "fetus") is a living human being. To understand this point, and to understand the testimony of the witnesses from Planned Parenthood who testified

before the Task Force, it is important to distinguish three separate questions.

The first question is a scientific one: is the human being, from the moment of conception, a whole separate living member of the species *Homo sapiens* in the biological sense? The second question is a moral question: assuming that the answer to the first question is yes, should the life of that human being be accorded the same value, worth, and dignity at all stages of development, i.e., as a blastocyst, embryo, fetus, child, adolescent, and adult. And the third question is a legal one: does the Constitution of the United States protect the rights of human beings at all stages of development before birth?

In *Roe v. Wade,* the Supreme Court expressly declined to answer the scientific or moral questions. With regard to the scientific question, the Supreme Court said that at this "point in the development of man's knowledge" it could not say whether a human embryo or fetus is or is not a human being. The Court ruled that the state could not legally prohibit abortion. Whether or not this decision was based upon sound legal analysis has never stopped being the subject of great debate.

Second, the *Roe* Court assumed that there would be a normal healthy physician-patient relationship in which the doctor would impart pertinent information, and that decisions would be made through consultation between the physician and patient. "All these are factors the *woman and her responsible physician necessarily will consider in consultation.*" (*Roe v. Wade,* 410 U.S. at 153) (emphasis added).

Third, the Court assumed that motherhood and child-rearing forced "upon the woman a distressful life and

future" and that child-rearing could cause "mental and physical" health problems and "distress" of such a nature that abortion had to be available, and that the absence of legalized abortion was a detriment imposed upon the women by the state. (*Roe v. Wade,* 410 U.S. at 153.)

Nowhere in the *Roe* decision did the Court mention the distress due to the pregnant mother losing her child to abortion. In fact, there is no mention of the great benefit and joys that the mother-child relationship brings to the mother, or the devastating loss and distress incurred by the mother who loses her child to abortion. The absence of mention of the nature of this loss and this profound distress is, in all likelihood, attributable to the fact that in 1973 there had not yet been adequate experience with the after-effects of abortion.

Likewise, the Court never mentioned the fact that the pregnant mother possesses a constitutionally protected relationship with her unborn child or the fact that this relationship, protected as a fundamental right, is terminated by the abortion procedure. House Bill 1166 expressly states that this is not only the case, but it required the abortion providers to disclose this information in writing to a woman considering an abortion.

Fourth, the Court's opinion assumed that a decision to have an abortion would be truly voluntary and informed.

Fifth, the Court assumed that the abortion procedure was safe and that the risk to the women's health and life was far greater in carrying the child to full term than in having an abortion. See, e.g. *Roe v. Wade,* at 149 ("consequently, any interest of the state in protecting the woman from an inherently hazardous procedure . . . has largely disappeared").

Sixth, the Supreme Court assumed that the woman faced significant difficulties as a result of a cultural stigma of unwed motherhood.

As a result of the advances in modern science and medicine, and particularly because of information derived from the practice of abortion since its legalization, the Task Force finds that each of these assumptions has been entirely or largely disproved. The new understanding about these facts, and the new information not previously known concerning them, are important in understanding how abortion affects the lives, rights, interests, and health of women.

2. What Has Been Learned From the Practice of Abortion Since the *Roe v. Wade* Decision

It can no longer be doubted that the unborn child from the moment of conception is a whole separate human being. During the 2005 legislative session, the South Dakota Legislature passed HB 1166 that expressly found that "all abortions, whether surgically or chemically induced, terminate the life of a whole, separate, unique, living human being." The Act amends SDCL 34-23A-10.1 to require a physician to disclose in writing to a pregnant mother "that the abortion will terminate the life of a whole, separate, unique, living human being." "Human being" is used in the biological sense as a whole member of the species *Homo sapiens* (SDCL 34-23A-1(4)).[2]

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[2] South Dakota Deputy Attorney General John Guhin addressed the Task Force on August 1, 2005 and reported that a preliminary injunction was entered enjoining the enforcement of HB 1166 in order

(Continued on following page)

The Task Force received testimony from numerous experts who reiterated this fact. Of significance were detailed affidavits received from nationally and internationally renowned experts from a number of scientific and medical disciplines, who explained the scientific facts and information that establish the fact that abortion terminates the life of a human being. The Task Force concludes that the scientific evidence not only supports the Legislature's finding on this matter, but that it is indisputable.

Dr. David Fu-Chi Mark, a distinguished molecular biologist who has patented certain polymerase chain reaction technologies, provided a declaration (or affidavit) and explained that the new recombinant DNA technologies that have developed over the past twenty years provide scientific evidence about the unborn child's existence and early development and its ability to react to the environment and feel pain prior to birth.

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to preserve the status quo while the case filed by Planned Parenthood challenging the Act is pending in the Federal District Court. Mr. Guhin reported that the state filed an appeal from the entry of the preliminary injunction. Members of the Task Force have subsequently learned that the trial in that case is not yet scheduled and it is anticipated that it will likely be held in the mid to later half of 2006.

It was of some interest to members of the Task Force to learn that while the Federal District Court entered the Order imposing the preliminary injunction, the Court did so on the basis that the Court sought to protect Planned Parenthood's First Amendment right of free speech which they asserted in that case. The Court recognized there was a conflict between these asserted rights of the abortion providers and the interests of the pregnant mothers which were sought to be protected by the Act. We note that the Court attempted to weigh the harm to the personal rights of the abortion providers against the harms to the interests of the pregnant mothers, and the Court chose to protect the interests of the abortion providers as a way to preserve the status quo while the case is litigated in the District Court.

Dr. Mark stated that:

> "[U]ntil the development of molecular biology and modem molecular biological techniques first began in the 1970's and exploding throughout the 1980's and 1990's, most scientific knowledge concerning human identity and human development prior to birth was based solely upon gross morphological observations and biochemical studies. . . . The new techniques developed through the exploding revolution over the past ten to eighteen years permits scientists to observe human existence and development at a molecular level, which is applicable in determining genetic uniqueness, genetic diseases and related information through the analysis of human genes well in advance of the old gross, anatomical observation." (Mark Declaration, P. 5, Par.6.)

Dr. Mark explained nine different DNA technologies that, in essence, have "turned on the lights" for scientists over the past twenty years. (See Section II-B of this Report.)

A number of other nationally and internationally recognized experts also corroborated the findings of the Legislature found in HB 1166. Dr. Bruce Carlson, a renowned human embryologist and professor at University of Michigan Medical School, has published a text on Human Embryology used in medical schools in many nations. Dr. Carlson, Dr. Mark, and the human geneticist, Dr. Marie Peeters-Ney, all emphasized the significance of the way that genetic information is expressed and the manner in which it is "pre-programmed" for life. Dr. Carlson stated, "The wholeness (or completeness) of the human being during the embryonic ages cannot be fully appreciated without an understanding of how the genetic information is packaged, and how the information becomes

unfolded and cascades into visible structures." (Carlson Declaration, P. 4, Par. 12.)

The Task Force also reviewed a declaration from Dr. Bernard Nathanson, a board certified obstetrician and gynecologist, a Diplomat of the American Board of Obstetrics and Gynecology, and a Fellow of the American College of Obstetrics and Gynecology. Dr. Nathanson practiced medicine in New York for many decades and was personally responsible for approximately 75,000 abortions. Dr. Nathanson was also one of the founders of the National Association for the Repeal of the Abortion Laws (NARAL) in the United States in 1969. He stated that: "I was active among the pro-abortion community for a number of years, and I was actively involved in attempting, along with other abortion providers, to win public support for all forms of abortion." (Nathanson Declaration, Par. 1 to Par. 5.)

Dr. Nathanson testified that the fact an abortion terminates the life of a living human being is generally known among obstetricians and scientists. However, Dr. Nathanson stated that abortion doctors and operators of abortion clinics often deny this fact for strategic reasons. He testified that he and other strategists for NARAL, for instance, adopted certain tactics to win the public perception that all forms of abortion should be and remain legal. Dr. Nathanson stated that one tactic was to suppress and denigrate all scientific evidence that supported the conclusions that a human embryo or fetus was a separate human being. He stated that he and others denied what they knew was true: "The abortion industry would routinely deny the undeniable, that is, that the human embryo and fetus is, as a matter of biological fact, a human being." (Nathanson Declaration, Par. 14.) Dr. Byron Calhoun, a

specialist in internal fetal medicine, also testified that it cannot be denied that the unborn child is a separate human being.

Specifically, Dr. Nathanson stated that:

> "The abortion procedure is an extraordinary one because in it the physician is proposing to terminate the life of one of his patients to whom the physician owes a legal and professional duty. The doctor has no legal authority to do so. Under normal circumstances, if he terminated the life of the unborn child, he would be guilty of a battery upon the mother, and, in fetal homicide states, such as South Dakota, he would be guilty of a homicide. The physician is given his authority to terminate the life of one of his patients only if he receives authority in the form of consent from the pregnant mother.
>
> In order for such a consent to be informed, at a minimum, the physician must be satisfied that the patient understood that the second patient was in existence, and that the procedure would terminate the life of her unborn child. These facts go directly to the risks, and effect the procedure would have on the second patient, but they also explain the nature of the procedure. The nature of the procedure is to terminate the life of the unborn child. Withholding these facts from the pregnant mother deprives her of the ability to make an informed decision for herself. Such informed written consent fails to meet the reasonable patient standard of disclosure and deprives the mother of her rights of self determination." (Nathanson Declaration Par. 10 and 11.)

No credible evidence was presented that challenged these scientific facts. In fact, when witnesses supporting

abortion were asked when life begins, not one would answer the question, stating that it would only be their personal opinion.

A number of physicians also testified that it has been recognized for some time that the doctor who has a pregnant mother as a patient has two separate patients – the mother and the child – to whom he owes a professional and legal duty. Dr. Glenn Ridder, a physician who practices in Sioux Falls, South Dakota, testified that the physician has a duty to both patients, that disclosures about the risks or harms to the child must be made to the pregnant mother and that only she can make the decision for the child. (Ridder Declaration, Par. 9.)

Dr. Yvonne B. Seger, and Dr. Cynthia Davis, both of whom practice obstetrics and gynecology in Sioux Falls, South Dakota, also submitted statements that explained that the physician who has a pregnant woman as a patient has two separate patients – the mother and the child – and that the physician must make disclosures about the risks and effect any procedure would have on each. (Davis Declaration, Par. 5; Seger Declaration, Par. 5.)

Dr. Byron Calhoun, Maternal-Fetal Medical Specialist from Rockford, Illinois, explained that the unborn child is considered a separate patient in his or her own right. Dr. Calhoun also stated that there is no outcome data to support the idea that the mother's life is put at risk by allowing her to carry to term a critically ill baby. See, also Harrison, M.R., Golbus, M.S., Filly, R.A. (Eds), *The Unborn Patient,* 2nd Ed. W.B. Saunders, Phil. 1991; American College of Obstetricians & Gynecologists, *Ethics in Obstetrics and Gynecology, 34* (2nd Ed. 2004) (The maternal-fetal

relationship is unique in medicine . . . because both the fetus and the woman are regarded as patients of the obstetrician).

Dr. Mark Rosen, a Fetal Anesthesiologist practicing in San Francisco, California, explained that with the advances of modern medical techniques, fetal surgery is now performed on the unborn child *in utero*. The procedures include, among others, inserting fetal shunts, blood transfusions, muscle biopsies, and procedures to repair congenital diaphragmatic hernias.

The Task Force concludes the following:

1. That abortion terminates the life of a unique, whole, living human being;

2. That the physician performing an abortion terminates the life of one of the physician's patients to whom the physician owes a professional and legal duty;

3. That the authority for the physician to terminate the life of his or her patient rests exclusively upon the written consent of the pregnant mother, which, at the time it is signed, terminates the doctor's duty to the child; and

4. That the mother has an existing and important and beneficial relationship with her child that is irrevocably terminated by the abortion procedure.

3. The Current Practice of Abortion in South Dakota[3]

Kate Looby, the Director of Planned Parenthood of South Dakota which operates an abortion facility in Sioux Falls, South Dakota, testified before the Task Force.[4] Dr. Carol E. Ball, who performs abortions there, also testified before the Task Force. Both described how Planned Parenthood counsels women about abortions, what kind of information is disclosed, and the interaction between the abortion physician and the pregnant mother.

Based on their testimony, it is admitted that the Planned Parenthood facility in Sioux Falls does not disclose any information about the unborn child and that it does not disclose to the pregnant mother in any way that the child, the second patient, is already in existence. Planned Parenthood only discloses what the state requires them to disclose by statute. This does not adhere to the common law disclosure requirements discussed by Dr. Seger, Dr. Nathanson, Dr. Davis, and Dr. Ridder.

South Dakota Codified Law 34-23A-10.1(2), which appears as Exhibit B, requires that the abortion facility simply inform the women by telephone that they have the right to review printed material prepared by the state that provides information about fetal development.

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[3] One of the primary goals of the Task Force was to gain an understanding of the practice of abortion, and specifically the practice of abortion in our State. Because no other facilities, other than Planned Parenthood of South Dakota, are disclosed as abortion providers in this state, we had no other choice but to gather our information from this organization.

[4] Ms. Looby is a member of the South Dakota Task Force to Study Abortion.

Ms. Looby testified that their procedure includes having an assistant speak directly to the women over the phone. She states that in this part of the conversation, the woman has an opportunity to ask questions. However, Planned Parenthood still does not volunteer information about the unborn child.

The state's preprinted information does not make it clear that the procedure will terminate the life of a living human being. It only lists aspects of fetal development.

The South Dakota Department of Health publishes statistics about abortions performed at Planned Parenthood, and elsewhere in the State. The latest statistics, as contained in the 2003 report, were made part of the record.

In 2003, there were 819 abortions performed in South Dakota. The law requires the abortion facility to provide a form for the women to fill out concerning the information given to the women. In 819 forms filled out by these women, only five women requested that the written information be mailed to them. (See, 2003 South Dakota Vital Statistics Report, S.D. Department of Health, P. 71.) That means that 814 of the 819 women (99.4%) received no information about the development of the unborn child except the information required by SDCL 34-23A-10.1(1)(c): "The probable gestational age of the unborn child at the time the abortion is to be performed." In other words, the woman is only told how far along she is in the pregnancy, a fact she most often already knows from the date she missed her last menstrual period.

Further, the 2003 Vital Statistics Report of the South Dakota Department of Health states that:

> "The data showed that of the 819 forms received, 813 of the patients reported receiving the medial information described in SDCL section 34-23A-10.1 during a telephone conversation and 6 in person." (Report, P. 71.)

The report indicates that in every instance the physician gave the disclosure concerning gestational age. (Report, P. 71.)

Additionally, according to Ms. Looby's testimony, a message given by the physician is pre-recorded. It is a four-minute recording designed to satisfy the statutory requirement of SDCL 34-23A-10.1 that the information contained in that section be imparted by the physician who will perform the abortion.

To summarize, in 814 out of 819 procedures, the only information given to the pregnant mother about the second patient was simply a gestational age. In 813 cases out of the 819, the physician in a taped statement gave resource information. The women had no way of asking the physician any questions since it is a recording.

Based upon the reporting of the women on the forms reviewed by the Department of Health, and the testimony of Ms. Looby and Dr. Ball, it appears that Planned Parenthood does not voluntarily convey other information about the fetus after women listen to the doctor's taped recording.

In fact, what is communicated to the women is misleading. Ms. Looby and Dr. Ball played a video for the Task Force illustrating what may be communicated to women about the abortion procedure. In this video, reference is made to the contents of the woman's uterus in dehumanizing and misleading language. For instance, the

video never mentions that an unborn child, embryo, or fetus is even present. It never refers to the unborn child in any way that would imply the existence of a second patient. The language used in the video simply implies that something is removed but does not identify what it is except to claim it is only "tissue."

1. "The uterus is then *emptied* by a gentle suction."
2. "As the uterus is *emptied* . . . "
3. "A spoon shaped curette may be used to feel the walls of the uterus to help ensure complete evacuation."
4. "Occasionally the *contents of the uterus* may not be *completely emptied*."
5. "To remove *the tissue* it may be necessary to repeat the vacuum aspiration."
6. "Very infrequently, the early abortion procedure will not end the pregnancy."
7. "If the pregnancy has not been ended, another abortion procedure is recommended."

We find first that Planned Parenthood fails to inform the pregnant mother in any language that her unborn child is in existence. It is impossible for a woman to give informed consent to an abortion if she does not fully understand that her child is in existence and that she is consenting to the termination of the life of her child.

Second, the doctor who in seeking consent to terminate the life of his or her second patient (the child) cannot, in a professional or moral sense, contend that proper authority has been obtained from the mother if she is not fully aware that she is giving such authority.

Dr. Ball and Ms. Looby testified that the women who come to Planned Parenthood sign a "consent" to have an abortion without first speaking to the doctor. These consent forms are filled out before the doctor sees the patient. A person designated as a "counselor" provides whatever information is told to the pregnant mother. However, Ms. Looby admitted that these "counselors" are not licensed and the only training they receive is from Planned Parenthood.

The video played recites:

> "If you have not done so already, you will meet privately with a counselor. The counselor reviews your medical history, answers any questions you have about the abortion procedure, provides after-care instructions and talks with you about your birth control needs. The counselor also talks with you about your decision to have an abortion. It is important that this decision is yours and made of your own free will. *At the end of the counseling session, you are asked to sign an informed consent indicating that you understand the medical risks of the abortion procedure.*" (Emphasis added).

Thus, the abortion doctor sees the pregnant mother for the first time in the procedure room, only after the consent form has been signed and the woman has made commitment to undergo the abortion.

The video, Dr. Ball, and Ms. Looby all verify that the women are told that they may ask questions of the doctor who is to perform the abortion. However, we find that the process which results in the pregnant mother signing the consent form and making her decision *before* ever seeing or speaking to a abortion doctor is incompatible with the

principles of a doctor's duty to see that the patient's decision is informed *before* she consents to an operative procedure. We find that there is no true physician-patient relationship in this process, and once the decision has been made, the woman is seeing the doctor, not for counseling, consultation, or help in reaching a decision, but rather, to submit to the medical procedure that she has already committed to, whether or not it was informed.

The abortion doctor, therefore, provides no counseling unless the pregnant mother initiates a discussion and asks questions in the procedure room. However, we find that even if a woman has the will to press the doctor for answers to questions, the answers that are given at Planned Parenthood concerning the most critical matters will not be helpful to her.

Following her testimony, Dr. Ball was asked what she would tell a woman who asked her "Is this a human life?" or "At what point in the process does human life begin?" or similar questions. Dr. Ball testified that she would refuse to answer these questions. When pressed on this point, Dr. Ball stated that it is a subjective matter for the woman to decide, and an answer from her is nothing but her subjective personal opinion.

Thus, a woman who goes to Planned Parenthood in Sioux Falls is not given scientific and factual information necessary for her to understand that the procedure will terminate the life of a human being, even when the woman asks precisely if the abortion is killing their baby.

We find that Planned Parenthood has confused the objective biological fact that the procedure terminates the life of a live human being with the moral, or value judgment of what respect or value should be placed upon the

life of that human being. Under existing law, only the pregnant mother has the right to decide whether she should or should not submit to the abortion. But the pregnant mother can apply her own discrete personal, moral or religious values to her circumstance only after accurate biological facts concerning the existence and nature of her unborn child are disclosed.

By its own admissions, Planned Parenthood makes no such disclosures as required by common medical practice, it uses misleading language such as "contents of the uterus," and it refuses to make accurate disclosure of biological facts even when asked directly about the unborn child.

A policy that requires a patient to research the scientific facts on her own conflicts with all accepted notions of informed consent, and virtually ensures that South Dakota women will submit to a procedure without giving informed consent.

We find that the withholding of the biological information from women has the effect of imposing the personal philosophy of Planned Parenthood and its agents upon these women. To say that a human being, no matter how young or physically immature, is nothing but "tissue" or "contents of the uterus" is to already make and convey the judgment that this human being has less value than others. This precludes the mother from making the decision for herself about whether the life of the human being in question has value.

The testimony of Ms. Looby and Dr. Ball also made it clear that Planned Parenthood does not make accurate disclosures about the risks of abortion. These are discussed more fully in Section II-E. In the Planned Parenthood video

referenced in this Report, the following statements were made which we find to be completely inaccurate based on the record and evidence discussed in Section II-E:

1. "Early abortion by vacuum aspiration is one of the safest procedures in all of medicine."

2. "A legal abortion, as it is performed in the United States today, is a very safe procedure and complications are rare."

3. "The emotion most women experience after having had an abortion is relief."

4. "Women may have some mixed feelings at this time but emotional problems after abortion are uncommon, and when they happen, they usually go away quickly."

5. "Serious long-term disturbances after abortion appear to be less frequent than after childbirth."

6. "The risk of dying from a full-term pregnancy and childbirth is at least seven times greater than that from early abortion."

Dr. Ball testified that Minnesota is her state of residence and medical practice. Planned Parenthood of South Dakota schedules abortions about six days a month. On each of these six days, Dr. Ball, or one of three other out-of-state physicians, travels to Sioux Falls to perform, on average, twenty abortions per day, and then leaves the state the same day. One of these four out-of-state abortion doctors has hospital privileges in the Sioux Falls area. Dr. Ball testified: "we have a verbal agreement with an Ob/Gyn group in Sioux Falls who will help us with any complications that occur." Therefore, if any woman has complications, local doctors who are strangers to the

patient and were in no way involved in the abortion procedure must see her.

The Task Force concludes that there is no traditional or healthy physician-patient relationship between an abortion doctor at Planned Parenthood in South Dakota and the pregnant mother. The only time the abortion doctor sees the patient is in the room where the procedure is to be performed, after the woman has already committed to submitting to the abortion by signing the consent form.

Further, we seriously question whether the practices of the doctors who provide abortion services at the Sioux Falls facility meet the standards set by the American College of Surgeons, particularly with respect to its principles concerning the relationship of the surgeon to the patient and its proscription against itinerant surgery.[5]

It must be noted that the information regarding the practice of abortion in South Dakota is based entirely on the practices at Planned Parenthood of South Dakota where almost all abortions are performed. Doneen Hollingsworth, Secretary of the Department of Health, testified that there are four abortion providers in the state, but South Dakota Codified Law prohibits the disclosure and identification of these providers.

There have been two other significant developments in the past twenty years that have resulted in further understanding about the practice of abortion. First,

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[5] Itinerant surgery involves the practice of a physician outside the physician's normal geographical area of practice to perform surgery where the physician is not personally involved in the original diagnosis or preparation of the patient and is not involved in follow-up care.

pregnancy help centers have opened all over the country to offer counseling and support to women in crisis pregnancy situations. Second, women have begun to speak out about their abortion experiences.

4. The Experiences of Pregnancy Help Centers

Cynthia Collins has been the Executive Director of the Crisis Pregnancy Help Center of Slidell, Louisiana, for the past eighteen years. She explains in her declaration that many of the 3,000 to 4,000 pregnancy help centers around the country are independent of each other, but that there are two national organizations, CARENET and Heartbeat International, that provide training to and certify counselors for women with crisis pregnancies. She affirmed that these centers also provide post-abortion counseling for women traumatized by abortion.

Based upon the information provided by Cynthia Collins; Linda Schlueter of the Justice Foundation in San Antonio, Texas; Stacey A. Wollman, the Director and a licensed counselor at Black Hills Crisis Pregnancy Center in Rapid City; Leslee J. Unruh, Founder and President of the Alpha Center in Sioux Falls; Millie Lace, a licensed professional counselor in Arkansas; and many others, it appears these centers provide help and counseling to about one million or more pregnant mothers each year. In addition, it appears that these centers provide post-abortion counseling to 100,000 to 200,000 women each year.

As a consequence of the rise of these centers, there is now information available that affirms that in a significant portion of abortions, the pregnant mothers' consents

are not truly informed or voluntary. This fact is borne out by information received from the counseling of women contemplating abortion and women seeking post-abortion healing.

We find the testimony of these pregnancy help center personnel particularly credible because they are free of any conflict of interest. The pregnancy help centers do not provide abortions and they do not take payment from the women they serve.

With respect to the pre-abortion counseling, Cynthia Collins states that of the 4,400 women who sought help from the center in Slidell in the past four years, 1,860 tested positive for pregnancy. Of these 1,860 women, 560 of them (30.1%) stated that they thought they would have an abortion or that they were seriously considering an abortion. These women were counseled about the nature of abortion, the risks, and alternatives. In that process, the center provided information about the development of the unborn child.

Ms. Collins explained that when counselors are truthful about this kind of information, the pregnant mothers most often "want to know if the procedure will terminate the life of an existing human being, regardless of his or her age or maturity, and they want candor." She stated that in her experience, this is decisive information for the women and they commonly conclude that a mother should protect, not terminate, the life of her own child.

She stated further that once the women understand that the abortion procedure does not prevent a human being from coming into existence, but instead terminates a life that already exists, they begin to appreciate the benefit and joy the existing child could bring to their lives,

and decide not to have an abortion. As a result of the counseling at the Slidell center, Ms. Collins testified that only 45 of the 1,860 pregnant mothers (2%) ultimately had an abortion.

Perhaps most significant, 1,775 of the 1,815 women (about 97%) who carried their children to term raised their children themselves. Of the other 50 women, only twelve are known to have terminated their parental rights through adoption. Thus, 97% or more of the women who carried their children to term raised their children themselves, and at least 95% of all of the women who found out they were pregnant decided to raise their children.

From the information available, it appears that similar statistics and results are found uniformly among the pregnancy care centers. Leslee Unruh, Stacey Wollman, and Eleanor Larsen, a licensed counselor in charge of supervising the counseling at Alpha Center, all provided affidavits in which they relate similar results. In Sioux Falls, of 400 pregnant women seriously considering abortion, about 85% decided to carry their children to full term.

These statistics are startling when compared to those of clinics that provide abortions. It appears that at Planned Parenthood, where women are not informed of information about the child, virtually every woman submits to an abortion.

In the 20 years that the Slidell Center, the Alpha Center, and the CareNet Pregnancy Resource Center have operated, not a single woman ever reported that they regretted their decision to have their child.

At the Slidell Center, Ms. Collins stated that in any given year, 70% to 85% of women seeking post-abortion counseling relate that they made their decision under some form of coercion. More than 80% of these women state that the abortion clinics did not counsel them properly, and that if they had been given accurate information, they would not have submitted to an abortion.

Ms. Unruh stated that among the post-abortive women seeking counseling at the Sioux Falls Alpha Center, 75% to 85% in any given year report that they felt they were misled by the abortion clinics and that their decisions were uninformed and, in many ways, coerced. Among these women were women who had abortions at Planned Parenthood in Sioux Falls.

Stacey Wollman testified that at the CareNet Pregnancy Center of Rapid City, almost 60% of the post abortive women receiving counseling stated that their abortions were the result of some form of coercion. The women commonly complain that the pre-abortion counseling they received was either non-existent or inadequate.

Millie Lace, from Arkansas, further testified that as a professional counselor and coordinator for a national helpline, she receives calls from women in South Dakota, and verified much of the above information.

5. The Experiences of Women Who Have Had Abortions

We received and reviewed the testimony of more than 1,940 women who have had abortions. This stunning and heart-wrenching testimony reveals that there are common experiences with abortions. Women were not told the truth

about abortion, were misled into thinking that nothing but "tissue" was being removed, and relate that they would not have had an abortion if they were told the truth.

They relate that they were coerced into having the abortion by the father of the child or a parent, and that the abortion clinics also apply pressure to have the abortion. They almost uniformly express anger toward the abortion providers, their baby's father, or society in general, which promote abortion as a great right, the exercise of which is good for women. They almost invariably state that they were encouraged to have an abortion by the mere fact that it was legal.

They are stunned by their grief and the negative impact it has had on their lives. Many of these women are angered by grief at the loss of a child they were told never existed. One woman testified before the Task Force about three abortions she was misled into having, only to find that she was rendered infertile by the vacuum aspiration that damaged her fallopian tubes. She was distraught at having to explain to her new husband why they could never have children. Each of these women's stories is powerful.

The overwhelming majority of women testified that they would never have considered an abortion if it were not legal. Their testimony revealed that they feel that the legalization of abortion simply gave a license to others to pressure them into a decision they otherwise would not have made. Most of the women stated that abortion should not be legal.

Ms. Linda Schlueter, Vice President and Senior Staff Attorney of The Justice Foundation, testified that it is particularly significant that both of the plaintiffs in the

landmark abortion cases, *Roe v. Wade* and *Doe v. Bolton,* have sought to have the courts overturn the decisions because it is now so clear how abortion violates the rights, interests, and health of women. Norma McCorvey, Jane Roe in *Roe v. Wade,* believed that an abortion would help her, but she was never told about any physical, emotional, or psychological consequences. She actually never had an abortion herself, but her work in several abortion clinics caused her to see the truth. Sandra Cano, Doe in *Doe v. Bolton,* subsequently told the court that she never even wanted an abortion and her case was a fraud.

A year ago, Judge Edith Jones of the U.S. Court of Appeals for the Fifth Circuit, often mentioned as a candidate for the U.S. Supreme Court, wrote a published opinion in which she referred to the evidence provided by Ms. McCorvey in the *Roe* case, including the sworn affidavits submitted to this Task Force. Judge Jones stated that this evidence provided new and fresh information never before considered by the U.S. Supreme Court.

We find the testimonies of these women an important source of information about the way consents for abortions are taken, as well as many other matters relevant to the mandate given to this Task Force by HB 1233.

B. The Body Of Knowledge Concerning The Development And Behavior Of The Unborn Child Which Has Developed Because Of Technological Advances And Medical Experience Since The Legalization Of Abortion

The Task Force received scientific information from highly credentialed scientists and medical practitioners. Information about the nature and development of the

unborn child is now available that was not in existence at the time of *Roe v. Wade.*

1. The Development of the Field of Molecular Biology and Other Sciences

It has been known for the past five decades that human beings are biologically made up of molecular building blocks. The development of these building blocks is controlled by genetic material known as deoxyribonucleic acids (DNA) and ribonucleic acids (RNA). DNA contains genetic information, and RNA contains instructions for the synthesis of proteins.

The Task Force received a declaration prepared by Dr. David Fu-Chi Mark, who explained the modem developments in molecular biology, the information it has recently revealed, and the significance of that information. Dr. Mark is a nationally celebrated molecular biologist who has patented various polymerase chain reaction (PCR) techniques. In 1986, Dr. Mark was given the award of *Inventor of the Year,* which is a single award given across all disciplines of science and technology. That particular award was given to Dr. Mark for his work in obtaining a patent for Human Recombinant Interleukin-2 Muteins, which is used to treat cancer of the kidney and skin, and is still marketed internationally. He also obtained a patent for Human Recombinant Cysteine Depleted Interferon – B Muteins, which is a drug that is used to treat Multiple Sclerosis, and is also marketed internationally. These two drugs were developed by employment of new molecular biological techniques: DNA cloning, in vitro modification of DNA, and DNA sequencing.

Dr. Mark observed that until the development of molecular biology and modem molecular biological techniques,

> "most scientific knowledge concerning human identity and human development prior to birth was based solely upon gross morphological observations and biochemical studies. Over the past [twenty] years there have been extraordinary scientific, medical and technological advances and discoveries which expose the rather rudimentary level of knowledge and ignorance of science, errors of fact and judgment concerning past scientific understanding of the child's existence as a human being, the child's early development and ability to react to the child's environment and feel pain prior to birth. The new techniques developed through the exploding revolution over the past [twenty years] permits scientists to observe human existence and development at a molecular level, which is applicable in determining genetic uniqueness, genetic diseases and related information through the analysis of human genes well in advance of the old gross, anatomical observation." (Mark Declaration, P. 5, Par. 6.)

Dr. Mark described and explained in technical detail, with full citations to the relevant literature, nine of the many new major molecular biological technologies, and how they have been used to discover information about the unborn child:

1. Use of Restriction Endonuclease Enzymes: a technique discovered early in molecular biology that allowed scientists to use enzymes to cut pieces of DNA so that DNA can be manipulated

in a test tube. This technique has had great practical application. (Mark P. 5-7, Par. 7A.)

2. DNA Cloning: a technique first achieved in 1974 which allows a scientist to take a portion of DNA from a single cell, reproduce it, and make copies of it, allowing for the modern study of DNA and its reproduction. It was with the advent of development of DNA cloning in 1974 that molecular biology began in 1974. (Mark, P. 7-8, Par. 7B.)

3. DNA Probe: a technology, first developed in 1979, that allows scientists to determine whether information contained in a certain gene is being expressed; study genome structure and identify sites of cytosine methylation (discussed below); and facilitate the development of DNA fingerprinting technology. (Mark, P. 8-9 Par. 7C.)

4. Southern Blot: a technique that permits the study of a single gene fragment. The importance of Southern Blot is the new ability to visualize the DNA of specific interest to the scientist, and it has led to the discovery and use of DNA fragmentation patterns visualized by Southern Blot as DNA fingerprints. DNA fingerprints, as discussed below, allows for the identification of DNA fragments both specific to the species *Homo sapiens,* and the specific individual member of the species. (Mark, P. 10, Par. 7D.)

5. Northern Blot: a technique that permits detection of messenger RNA (mRNA) in extremely small quantities of material. The importance of Northern Blot is the new ability of science to determine whether a specific gene is expressed in a particular tissue, which led to an understanding of the role of DNA methylation in regulating gene expression. (Mark, P. 11, Par. 7E.)

6. DNA Mapping: an important technique that allows scientists to determine if there are differences in DNA sequences, which provide science with the ability to detect abnormalities due to mutations in DNA, and to identify sites of DNA methylation. (Mark, P. 11-12, Par. 7F.)

7. DNA Fingerprinting: a technique first discovered in the mid-1980s by Alec Jeffries in Great Britain which gained wide application in the early to mid-1990s being introduced as evidence in American courts. It was learned by DNA mapping and Southern Blot analysis that the human genome contains many repetitive DNA sequences. Jeffries and his colleagues discussed in 1985 that, with the combined use of DNA mapping and Southern Blot, that a highly polymorphic DNA fragmentation pattern can be visualized. It was discovered that the highly variable DNA fragmentation patterns are characteristic of each individual human being, and the same pattern is found in all the cells of an individual. The significance of DNA fingerprinting is that it demonstrates the uniqueness of each human being, even at the first cell stage. (Mark, P.12, Par. 7G.)

8. DNA Sequencing: the currently used rapid sequencing techniques were first developed in 1997. The importance of DNA sequencing is that from the gene code, science can better understand the functioning and development of the human being, including the ability to identify potential sites for DNA methylation. It also helps science determine the difference in genes in order to identify the nature of mutations. (Mark, P. 12-14, Par. 7H.)

9. Polymerase Chain Reaction (PCR): without PCR, DNA could not be analyzed from a single cell. The PCR technique was first invented in 1985 to rapidly amplify a segment of DNA up to a million fold from a very small amount of material. PCR greatly enhanced the ability of science to understand the uniqueness of each human being. (Mark P. 14, Par. 7I.)

2. Science Now Explains The Wholeness and Uniqueness of Every Human Being From Conception

DNA fingerprinting and the refinement of it by polymerase chain reaction (PCR) techniques developed in the mid-1990s have proven that each human being is totally unique immediately at fertilization. Dr. Mark explained that the invention and widespread use of the DNA techniques such as restriction enzymes, DNA cloning, DNA sequencing, and Southern Blotting provided scientists with the ability to clone human DNA and study the organization of the genes encoded by DNA. This resulted in many discoveries in the mid-1980s leading to the finding that individual species DNA bands can be observed as a fingerprint of an individual human being. A child's DNA fingerprint is completely unique.

The invention of the PCR techniques has led to further refinements of the DNA fingerprinting techniques, which has given science the ability to obtain a human being's DNA fingerprinting – and therefore his or her identity – from a single cell.

There can no longer be any doubt that each human being is totally unique from the very beginning of his or her life at fertilization. (Mark, P. 19-21.)

The significance of methylation of cytosine was unknown until 1985. It has a profound significance in understanding the wholeness or completeness of a human being immediately following conception. Cytosine is one of the four base components of DNA. Methylation of cytosine, just as other methods of gene regulation, is a natural method by which genetic information is periodically silenced or activated for purposes of human development. Understanding how the genetic information contained in each human being's DNA is activated and how that information is programmed for life is essential to understanding that the human being is whole and complete at fertilization.

A human being at an embryonic age and that human being at an adult age are naturally the same, the biological differences are due only to the differences in maturity. Changes in methylation of cytosine demonstrate that the human being is fully programmed for human growth and development for his or her entire life at the one cell age. (Mark, P. 21-25.)

Although the material messenger RNA initially present in the fertilized egg can provide the basic functions necessary to transcribe the child's DNA in the initial one or two cell divisions immediately following fertilization, these messenger RNAs are quickly degraded and lost after the first two rounds of cell division, and the housekeeping genes in the child's own DNA are transcribed into messenger RNA at that point. This newly synthesized RNA directs the program of global demethylation of genes so that they can be activated to replenish the functions lost after the degradation of the maternal RNA. Modern molecular biology has discovered that by the third cell division (long before implantation) all control of growth

and development are established by the child's DNA. This means that immediately after conception, all programming for growth of the human being is self-contained. (Mark, P. 26.)

At the pre-implantation age, the child synthesizes a platelet activating factor (PAF) (discovered by O'Neil in 1991), beginning at the one cell age, that enhances the child's ability to implant into his or her mother's uterine wall; and at 7.5 days old, before implantation into the uterus, the child begins to produce an enzyme (IDO) that inhibits the mother's immune system from attacking and rejecting the child (discovered by Mann, et al in 1998). (Mark, P. 25-26.)

Molecular biology has also revealed information about chemical reactions within the unborn child that assist the child to adjust to its environment and defend itself from painful stimuli. The role of substance P in pain transmission through activation of a sub-population of the primary afferent c nerve fibers has been recently understood and documented in the 1990s. The presence of substance P, known to be a pain transmitter, was not observed in the human being during gestation until the late 1980s. The discoveries concerning neuropeptides, enkephalin and beta-endorphin, pain modulators, natural pain inhibitors, as found in the unborn child, is discussed in Section II-H of this Report, along with studies done in the 1990s that measured fetal plasma cortical and beta endorphin responses to painful stimuli given to the fetus in utero. (Mark, P. 27, 28, Par. 9 to 11.)

3. Developments in Modern Medicine Allow for the Diagnosis and Treatment of the Unborn Child

At the time of *Roe v. Wade*, and for twelve to fifteen years thereafter, it was erroneously believed that neonates, newborn full-term infants, were incapable of feeling pain. (Porter, F. "Pain in a Newborn," *Neonatal Neurology, Clinics in Neonatology*, 16(2) P. 549 et seq. (1989). Today modern medicine not only understands that neonates feel pain, but also that the child can feel pain *in utero.*

Likewise, the unborn child today is treated as a separate patient in his or her own right, not only during child birth and delivery, but from the earliest ages of gestation. Today conditions are diagnosed as early as eight weeks post-conception, and surgery is performed on the child at the fetal age of sixteen weeks post-conception, long before the age of so-called "viability", which is generally regarded as 21 to 23 weeks post-conception.

Dr. Mark Rosen, a fetal anesthesiologist, was invited to testify by phone before the Task Force on September 21, 2005. Dr. Rosen is a member of a surgical team headed by Dr. Michael Harrison, who is recognized as the pioneer of modern fetal surgery.

Dr. Rosen explained some of the procedures that are currently performed on the child in utero. He identified procedures installing shunts, blood transfusions, muscle biopsies, and congenital diaphragmatic hernias. We find this new branch of medicine of significance to the undertaking of this Task Force.

Dr. Rosen is also a contributor to Dr. Harrison's pioneering textbook on fetal surgery. (*"The Unborn Patient"*, Harrison, M.R., Golbus, M.S., Filly, R.A. (Eds), 2nd Ed. W.B. Saunders, Phil. 1991.) He wrote a chapter in *"The Unborn Patient"* concerning anesthesiology during fetal surgery. In pertinent part, Dr. Rosen wrote:

> "For fetal surgery, unlike maternal surgery, the fetus is not an innocent bystander for whom we attempt the least anesthetic interference. Instead, the fetus is the primary patient, requiring safe administration of anesthesia and close monitoring of anesthetic effects to ensure well-being."
>
> "A variety of benefits and risks characterize the techniques involved in fetal surgery. For example, the necessity or benefit of fetal anesthesia for surgical intervention is not documented. However, it has been shown that surgical manipulation of an unanesthetized fetus results in various degrees of autonomic nervous system stimulation, variations in heart rate, increased hormonal activity, and increased motor activity. It is also known that later in gestation a fetus will respond to environmental stimuli, such as noises, light, music, pressure, touch, and cold. The presence of fetal anesthesia therefore suggests some benefits and, in conjunction with fetal immobility during a surgical procedure, may be an important goal of fetal anesthesia."[6] (*"The Unborn Patient"*, supra, P. 175-176.)

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[6] Section II-H exclusively addresses the ability of the fetus to experience pain.

Harrison's text *"The Unborn Patient"*, is a monument to the reality that the unborn human being is indeed a separate patient in his or her own right. The text devotes eleven chapters to diagnosis of fetal defects before birth. Of interest is the fact that DNA-based tests taken at early ages in utero have been discovered to disclose numerous abnormalities. The DNA analysis has been well-received, for multiple reasons. The DNA analysis can be done from fetal or embryonic samples by amniocentesis or by *first-trimester* chorionic villus sampling, and this testing can be done with any nucleated cell type in any stage of differentiation. (*"The Unborn Patient"*, supra, Chapter 12, P. 82 (citations omitted).)

"The Unborn Patient" details numerous conditions of the unborn child that can benefit from surgical intervention. During the procedure, both the mother and fetus are anesthetized, the mother's abdomen is surgically opened, and the uterus incised. While still attached to the umbilical cord, amniotic fluid is drained off the child, and "the surgeon removes the fetus' left arm from the uterus and attaches specially designed fetal monitors."[7] These fetal monitors are for ECG, transcutaneous oxygenation, and temperature readings. The baby is incised surgically, repaired, and placed back into the mother's uterus. The uterus is then filled with warm lactated Ringer's solution and prophylactic antibiotics to replace any lost amniotic fluid.[8]

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[7] Levine, A.H. "Fetal Surgery" Aorn, 54 (1991): 17-19, 22-27, 30-32, at P. 30.

[8] Levine, A.H. "Fetal Surgery" Aorn, 54 (1991): 17-19, 22-27, 30-32, at P. 30.

Fetal heart rate and oxygen saturation monitoring is a norm in these procedures.[9] Some defects that might require this type of surgery include urethral obstruction, congenital diaphragmatic hernia, fetal chylothorax, and sacrococcygeal teratoma (a fetal tumor).[10] After surgery, the child can go on to be delivered at or near full-term.[11]

4. Children are Surviving Premature Deliveries at Younger Ages

Dr. Ola Didrik Saugstad, a world renowned neonatologist, submitted a declaration. Dr. Saugstad was honored as the recipient of the Yippo Award, which is given to only one neonatologist in the world, once every five years. He was also selected President of the European Congress of Perinatal Medicine in 2001 and given the prestigious Versinie Apgar prize from the World Perinatal Association. He has treated babies as young as twenty-one weeks post-conception and only one pound in weight.

Dr. Saugstad stated that the field of neonatology has had enormous development in the last two decades. One of the most important advances was the introduction of surfactant therapy. The injection of surfactant into the

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[9] Harrison, M.R.; Langer, J.C.; Adzick, N.S.; Golbus, M.S.; Filly, R.A.; Anderson, R.L.: Rosen, M.A.; Callen, P.W.; Goldstein, R.G.; and deLorimier, A.A. "Correction of Congenital Diaphragmatic Hernia In Utero, v. Initial Clinical Experience" J Pediatric Surg 25 (1990): 47-57, at P. 49.

[10] Harris, M.R.; and Adzick, N.S. "The Fetus as a Patient" *Ann Sur* 213 (1991): 279-291, at P. 281.

[11] Strickland, R.A.; Oliver, W.C.; Chantigian, R.C.; Ney, J.A.; and Davidson, G.K. "Anesthesia, Cardiopulmonary Bypass, and the Pregnant Patient" *Mayo Clin Proc* 66 (1991): 411-429, at P. 413.

lungs of premature infants has resulted in improved survival rates of the tiniest infants. In the US, approximately 50% to 60% of infants with gestational post-conception ages of 21 and 22 weeks respectively now survive.

Dr. Saugstad has provided vital testimony in his declaration. We especially find merit in his testimony from pages 7-14. Some of his testimony follows:

> "The anatomical, biochemical, and physiological development of a human being also starts early in fetal life and continues long after birth. Although the fetus is wholly dependent on the mother in order to survive, the extremely premature infant is wholly dependent on its surroundings. Even a term baby is dependent on its surroundings in order to survive. The concept of viability is therefore not as interesting as it seemed only some years ago. It is the same human being whether it is an early embryo, a fetus around midterm (20 weeks) or pre-term born after 23-25 weeks of gestation. The human subject is completely helpless and dependent on its care givers for a long time – from conception until late childhood. The child is a whole separate human being from conception and throughout the full gestational period, whether entirely spent in utero or not."

> "Suggestions or implications that a woman considering an abortion should be told anything about whether or not the fetus is a human being based upon whether the child is or is not of "viable" age would be misleading. The child is a human being before viability just as well as after viability and, as I previously indicated, viability is irrelevant to that question. There is absolutely

nothing that can be told to the woman that is different about a child that is a so called "post viable" age as opposed to one that is "pre viable" age with reference to the pure question of whether as a matter of biological fact, the fetus is a human being."

"I have traveled all around the world and have lectured in many different countries. The laws of those countries vary widely in how those countries view human beings both born and unborn. Whether a particular adult person holds legal or moral beliefs that individual human beings should be treated with equal respect and dignity, or whether there are justifications for treating them differently or be accorded degrees of respect may reflect the culture, but those individual beliefs are totally irrelevant to whether or not it is a human being. Just because in one culture some adult human beings are not treated equally or not even given legal rights, does not mean they are not human beings. Science is oblivious to such concepts."

"It defies all reason to suppose that the relative abilities of the adults or medical professionals at any one point in history or at any one place on earth – external to the child – determines if the child is a member of the human race. If adult care givers are inadequate, their failings do not render one child not human, but another, at the exact same age of gestation, human beings because he or she received proper care. At any one time, children in one part of the world will survive at younger gestational ages than children in other parts of the world because of the difference in the quality of medical services. Those services, administered differently, don't define the humanity of the children. An unborn child in Africa,

twenty-one weeks post-conception is just as much a human being as a twenty-one week post-conception child in the United States despite the fact that the African child may not be able to receive the kind of medical services the child in the United States may receive. The African child is not "viable". The American child is. Both are human beings."

"The point at which professionals can provide sufficient medical assistance to help a pre-term baby to survive outside the mother's womb is essentially a study in the abilities of those in medicine, not a statement of the essence or nature of the patient."

"The history of newborn medicine teaches us that the prognosis of sick newborn infants and especially pre-term infants has been dramatically improved over the past century and even in recent decades. It is impossible to know the extent of future developments that might lead to a human being able to live its entire post-conception life apart from the mother."

(Excerpts from Saugstad Declaration, P. 7 to P. 14.) 29

5. Human Embryology

A declaration from the nationally recognized human embryologist, Dr. Bruce Carlson, MD, Ph.D., was made part of the record. Dr. Byron C. Calhoun, a specialist in internal fetal medicine, and President of the American Association of Pro-Life Obstetricians also testified before the Task Force. Both experts provided evidence concerning the gross morphological appearance and functions of the unborn child during the embryonic and early fetal ages of the child.

Dr. Carlson is widely recognized as one of the leading experts in the nation in the field of human embryology. He taught human embryology and anatomy continuously from 1966 to 2004 at the University of Michigan Medical School. He is the author of a text on human embryology (*Human Embryology and Developmental Biology*) that is used in medical schools throughout the United States and many other parts of the world. He has conducted embryology research over the years in different parts of the world including periods in Moscow, Russia, Czechoslovakia, The Netherlands, and Helsinki, Finland.

Dr. Carlson set forth facts about what can be observed about the unborn child from fertilization to 12 weeks post-conception. He testified that it is a scientific fact that an abortion at any age of gestation terminates the life of a living human being.

He stated: "The post implantation human embryo is a distinct human being, a complete separate member of the species *Homo sapiens*, and is recognizable as such." (Carlson, P. 3, Par. 5.) He stated that this statement of biological fact is indisputable, and cautioned that this biological fact should not be confused with moral or philosophical considerations. Dr. Marie Peeters-Ney, an accomplished human geneticist, Dr. Saugstad, and Dr. Mark, also cautioned against this confusion. The Task Force also received the official report of the U.S. Senate Judiciary Subcommittee on Separation of Power after hearing testimony from 24 prominent scientists. That report stated that: "Those witnesses who testified that science cannot say whether unborn children are human beings were speaking in every instance to the value question rather than the scientific question." (Report to the Committee on the Judiciary, United States Senate, made by its Subcommittee on

Separation of Power, U.S. Government Printing Office, Washington, D.C. 1981, P. 11.)

Dr. Carlson submitted with his declaration a nine page attachment that sets forth a list of structures from three systems found in the adult human being, the nervous, circulatory, and digestive/respiratory systems, as they have been observed and described in 10 millimeter human embryos, the size of the unborn child at five weeks post-conception. Dr. Carlson's attachment lists approximately 106 components of the nervous system, 63 components of the circulatory system, and about 40 components of the digestive and respiratory systems.

It is noted that the unborn child's heart is beating at three weeks old. The 2003 South Dakota Vital Statistics Report published by the Department of Health reports that in 2003 and 2002, 92% and 95% of all abortions performed in South Dakota were from 5 weeks to fourteen weeks post-conception. That means that in each of these abortions, the unborn child had 210 components of these three systems visibly in place.

Both Dr. Carlson and Dr. Calhoun explained how the child functions and interacts with his or her environment in utero. The child's heart typically starts to beat at 21 to 22 days old. Soon the baby's heart starts to fold into a structure in preparation of its subdivision into the familiar four chambers of the mature heart. At this age of 22 days, the major blood vessels that enter and leave the heart are visualized. The gut tract is visible by the end of the fourth week, and a recognizable mouth is visible. The brain is forming at a rapid rate. In the fourth week cells of the neural crest migrate throughout the body and form an astounding array of structures, including the sensory and

autonomic nerves, pigment cells, and most of the bones and connective tissue of the face and neck. In the head, the earliest recognizable traces of the future eyes and inner ear are readily distinguishable. (Carlson, P. 10-11.)

By the end of the fourth week the unborn child has a highly functional circulation with three sets of blood vessels. The fifth week is characterized by profound changes in almost all organ systems of the human being. The brain becomes subdivided in 5 parts, corresponding to the major divisions of the adult brain, and nerve cells are forming. The eyes have formed a lens, and the nerves in the retina are taking shape. An olfactory placode, the precursor of the organ of smell in the nose is prominent. By the end of the fifth week, the 210 components of the three systems of the human body are observable.

On the first day following fertilization, the human embryo is identifiable as a specific individual human being on a molecular level. At the end of the sixth week, the unborn child is clearly recognizable as a human being even by gross morphological observation.

The sex of the child is also determined at fertilization. During the sixth week after fertilization the unborn child can respond to local tactile stimulation by reflex movements. Spontaneous movements are seen shortly after the completion of the seventh week. During the eighth week the heartbeat is approximately 160 beats per minute. (Carlson, P. 13-19.) A detailed discussion of the neurological development of the unborn child is found in Section II-H dealing with fetal pain.

The Task Force finds that the new recombinant DNA technologies indisputably prove that the unborn child is a whole human being from the moment of fertilization, that

all abortions terminate the life of a living human being, and that the unborn child is a separate human patient under the care of modem medicine.

C. The Societal, Economic, And Ethical Impact And Effects Of Legalized Abortion

The substantial negative impact legalized abortion has had on our society and culture is almost incalculable. In many ways it has deformed our nation. It has created a unique and especially painful exploitation of women. It has subjected women to the unjust and selfish demands of male sexual partners. It has subjected women to unnecessary risks of psychological and physical injury. It has denigrated the role of a mother as a unique individual because of the unique person she carries. It isolates a woman in her painful loss of her child. It has deprived our country of millions of children.

1. Societal Effects: Rape Abortions

Since abortion advocates so often explain the need for legalized abortion by pointing to the pregnancies that result from rape and incest, the Task Force finds that it is appropriate to address this issue.

Dr. J. C. Willke, founder of the Right to Life organization and President of the International Right to Life, testified before the Task Force on September 21, 2005. Dr. Willke noted that only approximately 0.1% of rapes result in a pregnancy. In his book, he writes:

> "We must approach this with great compassion. The woman has been subjected to an ugly trauma, and she needs love, support and help.

> But she has been the victim of one violent act. Should we now ask her to be a party to a second violent act – that of abortion? Reporting the rape to a law enforcement agency is needed." (Willke, *Why Can't We Love Them Both*, p. 263, 2003). (See Section III of this report for suggested legislation regarding reporting illegal sexual activity.)

Dr. Donald Oliver is a pediatrician who has practiced in Rapid City, South Dakota, for 25 years and who is board certified with the National Board of Medical Examiners and American Board of Pediatrics. In testimony to the Task Force, Dr. Oliver said:

> "I was asked to share some genetic information with you regarding the issue of incest. As many of you are aware, the union of two closely related people may result in an infant with genetic deformities or retardation. That is why in the United States we have laws against close relatives marrying. What you may not be aware of is that deformities and/or retardation occur in the smallest minorities of these instances. Ninety-seven percent of the time, these children are normal."
>
> "Just two months ago, I personally took care of a baby boy born to a very young teenage mother who was allegedly raped by her brother. So here we have the two scenarios brought forth most often by those on the pro-abortion side, rape and incest. This brave young lady carried her child to term and delivered a healthy normal boy. Here is an interesting fact that you may not be aware of. Just as two bad genes might pair up and lead to an unfortunate outcome, two good genes can pair up, and the infant of this incestuous relationship, may become the brightest person in the family –

sometimes in the genius range of intellect. They are normal children at least 97 to 98 percent of the time. This young teenage mother that I just spoke of, when she found out she was pregnant, felt that besides herself, the only other really innocent person in this sad situation was her baby, and he certainly didn't deserve capital punishment for her brother's sins. What great insight for someone so young! I wonder how many employees of Planned Parenthood would have encouraged and supported this young lady's courage to choose life for her newborn son."

2. General Societal Effects

It is difficult to comprehend the damage done to a society that so wounds its women, but we can refer to some of the testimonies of women who have been subjected to abortion – not to quantify this damage – but to comprehend its qualities. In doing so, we are compelled to witness their guilt, a guilt they are forced to endure because most of them trusted an abortion provider who told them that their only emotion following an abortion would be "relief."

The nearly 2,000 post-abortive women who provided testimony to the Task Force described this damage to themselves. We find all of these testimonies moving and the following are examples of their expressions of guilt, sadness, and depression:

"It has deeply wounded my spirit; it's murder." (Bate record 1500).

"I grieve the loss of my daughter to the point of almost being suicidal . . . it has caused emptiness in my life." (Bate record 1502).

"I carry the guilt and shame with me every day." (Bate record 1518).

The impact this pain, sadness, and anger has on our society is difficult to measure. We know it results in parenting problems, substance abuse, problems with relationships and personal issues, and sexual dysfunction. (See Section II-E.) The focus we place on the experiences of women harmed by abortion is appropriate because in many ways it is only now that we are realizing in an appropriate way, the magnitude of the injustice of abortion. For most of us, the injustice to the child has long been apparent; but we have never before seen the magnitude of the injustice to the mothers as witnessed from their personal testimonies.

We do not know the cost of abortion to our society, in the form of the lack of productivity of the women, but we fear it is far greater than we can imagine.

We do not know the cost to our society of losing the children who die in abortions, but we fear that the loss of their talent, productivity, and their love for their families and companionship with their mothers is far too great for us to imagine.

We do not know the cost to our society by the shattered and broken relationships caused by abortion, and the anger and pain resulting from abortion, but we fear it is far worse than what we are able to comprehend.

What we do know, and what we can say, is that abortion is unethical and immoral and our support of it as a society wounds all of us. It exploits the mother, destroys her rights, destroys her interests, and damages her health, and does so by killing her child. It isolates her in her pain

by placing all of the blame for the loss of her child upon her. It kills an innocent human being, and in the process creates the illusion that a mother and her child – who in reality have interests in harmony with each other – are somehow enemies. It portrays life, the greatest of gifts, as an intruder of no worth. It portrays the role of mother as valueless.

3. Economic Effects

Former South Dakota State Representative Matt McCaulley, an attorney in Sioux Falls, presented graphs to the Task Force that showed the decrease in the number of school-age children in the state as a result of legalized abortion from 1973. By 1996, the cumulative effect of legalized abortion in the state was the loss of over 13,000 annually in the South Dakota K-12 school systems, and this number has remained at over 13,000 fewer students annually for the period 1996-2003. Declining enrollment is a major problem for our K-12 school system. We cannot begin to estimate the earnings and other contributions that these citizens would have made to our State.

4. Ethical Impact

Perhaps the greatest cost to society, and our state, is that of our slide into a culture of neglect and abuse of our role as protectors of the natural and intrinsic right of our citizens. We are a nation founded upon principles of equal rights for all and the recognition that the role of government is to protect all human beings in their natural rights.

Legal abortion – as the embodiment of the assertion that the constitution provides protection for a doctor who

performs an abortion – has transformed our nation to one that subjects its mothers and children to the pain and injustice of abortion. This Task Force is unable to quantify the cost of this transformation in terms of measure. We can only try to understand its nature and we find that the tears of the women who have given us their testimonies best help us to understand.

D. The Degree To Which Decisions To Undergo Abortions Are Voluntary And Informed

The pregnant mother, in virtually every instance, considers having an abortion because she, or others in her life, believes that her circumstances render the *timing* of motherhood – *not motherhood itself* – inconvenient or undesirable.[12] And while an abortion succeeds

[12] The 2003 South Dakota Vital Statistics Report of the South Dakota Department of Health reports that among the 819 abortions performed in South Dakota in 2003, in only 16 cases (2%) was it reported that a reason for the abortion was because the mother "would suffer substantial and irrevocable impairment of a major bodily function if the pregnancy continued." Since no description of what condition was asserted, it is impossible to know whether such a threat actually existed in any of these 16 cases. (Report P. 70.) In 525 cases the box checked on the state-provided reporting form stated "The mother did not desire to have the child." The underlying reasons are not recorded. In 366 cases the box checked stated "The mother could not afford the child." Combined, these two reasons appear a total of 891 times. The 891 entries are greater than the total number of abortions because the women are permitted to list more than one reason for submitting to an abortion. However, the information on these forms is, in some ways, incomplete. For instance, there is no box that offers the woman the opportunity to explain that the reason she submitted to an abortion was because the baby's father or someone else placed demands upon her. Likewise, there is no box that indicates she has reached her decision because she feels she does not have enough time to explore other options.

in postponing motherhood, it also, as discussed above, destroys the already existing relationship the mother has with her child. That interest enjoys substantial legal protections in other contexts and our public policy is based upon the recognition that this interest of a mother is fundamental in nature and involves an intrinsic natural right. Both South Dakota Law[13]

[13] South Dakota law has strong policies to protect against uninformed or involuntary waivers or surrenders of a pregnant mother's relationship with her child. For instance, under South Dakota's adoption statutory scheme, the petition which represents the waiver by a mother of her rights cannot be filed, at the earliest, until five days after the birth of her child. S.D.C.L. 25-5A-4. The petition must set forth the reasons why the mother wants to give up her rights, and an express written consent to the termination of her rights. S.D.C.L. 25-5A-6 (5) & (7). To help insure that her decision is informed, the law requires that the mother receive counseling from an adoption agency, South Dakota Department of Social Services, or a private counselor before she consents to terminate the rights. S.D.C.L. 25-5A-22. The counselor must determine that the waiver of rights is voluntary without undue influence of others; that all other alternatives were examined; must explain likely emotional losses involved; must disclose the legal right to counsel; must discuss the permanent consequences of the decision; and must make an assessment of the ability of the parent to understand the consequences. S.D.C.L. 25-5A-23. This counseling must take place at least fifteen days before the mother petitions the court. A report must be submitted to the court certifying that all of these matters were discussed with the mother and the mother must sign a statement verifying that she understood the counseling. S.D.C.L. 25-5A-24. The court must then hold a hearing before it can terminate the mother's rights. S.D.C.L. 25-5A-9. Although the statute does not expressly set out the requirement, the Supreme Court of South Dakota has consistently recognized that the court must determine that the consent is knowing, informed and voluntary. *See, e.g., Matter of D.D.D.*, 294 N.W.2d 423, 426 (1980). *In the Matter of J.M.J.* 368 N.W.2d 602 (S.D. 1985), the S.D. Supreme Court ruled that a judgment terminating a mother's rights should be vacated, even if the court held that her

(Continued on following page)

and Federal Constitutional Law[14] recognize this right of the mother.

In making a decision of whether to undergo or forego an abortion procedure, the mother must also make a decision about the welfare of her child. The right to do so has been recognized as a constitutionally protected fundamental right. (*Meyer v. Nebraska,* 262 U.S. 390 (1923); *Troxel v. Granville,* 530 U.S. 57 (2000); *Pierce v. Society of Sisters,* 268 U.S. 510 (1925).)

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decision was informed and voluntary, if the record does not support the court's finding. The mother's rights are further protected by law which allows the mother under certain circumstances to withdraw her consent. In *Matter of Everett,* 286 N.W.2d 810 (1979). Thus, in the adoption context a mother must be fully counseled about other alternatives, can not terminate her rights until after the birth of her child, and her rights cannot be terminated except by a court order entered by a judge following a hearing in which the court concludes, upon an adequate record, that the mother's waiver of her rights was informed, knowing and voluntary.

[14] The relationship between a mother and her child is a fundamental liberty interest protected by the United States Constitution. *Santoski v. Kramer,* 455 U.S. 745 (1982). It is perhaps the oldest of the fundamental liberty *interests.* See, *Trowel v. Granville,* 530 U.S. 57 (2000); *Meyer v. Nebraska,* 262 U.S. 390, (1923), and *Pierce v. Society of Sisters,* 268 U.S. 510 (1925). This liberty interest has its source "in intrinsic human rights, as they have been understood in 'this Nation's history and tradition.'" *Smith v. Organization of Foster Families,* 431 U.S. 816 (1977) (quoting *Moore v. City of East Cleveland,* 431 U.S. 494 (1977)). The interest protected is the interest in the existing relationship. *Compare Stanley v. Illinois,* 405 U.S. 645 (1972); *Caban v. Mohammed,* 441 U.S. 380 (1979) with *Quilloin v. Alcott,* 434 U.S. 246 (1978); *Lehr v. Robertson,* 463 U.S. 248 (1983). In contrast to the cases involving fathers, the mother's interest in her relationship with her child has always been protected as fundamental. This is because "the mother carries and bears the child, and in this sense her parental relationship is clear." *Lehr, supra,* 463 U.S. at 260 & n.16 (quoting *Caban, supra,* 441 U.S. at 397 (dissent by Stewart, J.)).

Informed consent disclosures about the existence of the child are key because they not only establish the right of the pregnant mother in her relationship with her child, but also her right to protect the child's welfare.

And while the primary purpose of abortion is not medical in nature (the mother does not have an adverse medical condition that requires treatment), it requires a medical procedure. Dr. Stanley Henshaw, Ph.D., a science fellow at the Alan Guttmacher Institute (long associated with Planned Parenthood Federation of America), testified that an abortion provides no medical benefits for the woman who submits to one.

However, because a medical procedure is involved, the policies and laws dealing with informed consent to medical treatment and procedures are directly implicated and applicable. South Dakota employs the common law "Reasonable Patient Standard" of disclosure, under which a physician has a duty to disclose all facts about the nature of the procedure, the risks of the procedure, and the alternatives to the procedure. (See, *Canterbury v. Spence,* 464 F.2d 772 (D.C. Cir. 1972) (explaining the Reasonable Patient Standard of disclosure); *Weeldon v. Madison,* 274 N.W. 2d 367, 374 (S.D. 1985) (South Dakota Common Law adopts the *Canterbury* standard); see also *Savold v. Johnson,* 443 N.W. 2d 656 (S.D. 1989) (applying *Weeldon,* and *Canterbury*).)

Usually, where a medical procedure is performed, the disclosures about the alternatives relate to alternative medical treatment. However, since in at least 98% of the cases there is no underlying medical condition in need of treatment, the alternatives are non-medical in nature. Essentially, the alternatives for the pregnant mother are

to (1) exercise her right to keep her child and raise her child herself or (2) to delay the decision of whether to keep the child by carrying the child to term, gather information about what is best, and decide whether adoption is a better choice for her and her child.

Gail Dirckson, Social Worker with Bethany Christian Services of Sioux Falls, South Dakota, and Sister Mary Carole Curran, Ph.D., ABPP, Executive Director of Catholic Family Services of Sioux Falls, South Dakota, provided extensive testimony of the opportunity for, and merits of, both open and closed adoptions in South Dakota as a healthy rewarding alternative.

Therefore, in determining whether decisions to undergo abortions are voluntary and informed, we must consider whether adequate information is given and procedures carried out to protect the right of the pregnant mother in her relationship with her child, her right to protect the child's welfare, and her right to protect her own health.

1. The Mother's Decisions to Give Up Her Right to Her Relationship with Her Child and Her Right to Protect Her Child's Life are Often Not Informed and/or Voluntary

Both Ms. Looby and Dr. Ball testified that abortions in South Dakota are voluntary and informed. Lynn Paltrow, an attorney and Executive Director of National Advocates for Pregnant Women, testified before the Task Force. Ms. Paltrow contended that South Dakota's 1994 abortion informed consent statute, and the informed consent statutes of other states, impose counseling and informational

requirements "far beyond those required prior to other medical procedures." She believes that these statutes result in a "super" or "ultra" voluntary decision. Their reasoning and conclusions were unsupported by the objective evidence before the Task Force.

In fact, we find that an examination of the facts supported by virtually all of the credible objective evidence, compels the opposite conclusion. In the overwhelming majority of cases, the decision to submit to an abortion is uninformed. Further, there are many pressures and coercive forces and elements, including some that are hidden and inherent in the nature of the procedure, that render most abortions not truly voluntary.

The total record reflects the following:

a. The abortion providers fail to disclose the essential nature of the procedure – that it terminates the life of the woman's existing child;

b. When they do discuss the procedure, they provide misleading information in misleading terms, as previously discussed in this Report;

c. The abortion providers give misleading information about the psychological and physical risks to the mother, and do not disclose the direct injury to the child that leads to its death;

d. The abortion providers assume the women have made their decisions before they reach the facility;

e. The abortion providers place the burden upon the mothers to discover material facts on their own;

f. The abortion doctor's only contact with the mother prior to the abortion surgery consists of a pre-recorded audio tape, and the first face-to-face meeting of the doctor and pregnant patient is after she has signed the consent forms, paid for the surgery, and is on the procedure table (See Section II-A);

g. The pregnant mothers are often pressured into having an abortion by outside forces;

h. The contact and procedures by the facility personnel prior to the abortion are inherently coercive and force a quick decision; and

i. The fatal and irrevocable nature of the decision is not made known to the mother and adequate time for reflection is not provided.

As was detailed in Section II-A of this report, abortion providers in South Dakota fail to disclose anything at all about the unborn child. The only information given to 314 out of 819 pregnant women who were subjected to an abortion at the Planned Parenthood facility in 2003 was the age of the pregnancy. Women are not told that the procedure kills their already existing child. In fact, Dr. Ball stated that at Planned Parenthood, *even if a woman asks* whether the child exists or not, she will not answer her.

This failure is critical to the women's decision, because when information about the child is given to women at pregnancy help centers, it is reported that 85% to 98% of the women decide to not have an abortion.[15] If given, the

[15] It appears that, in contrast to the pregnancy help centers, virtually every pregnant woman who arrives at an abortion clinic

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disclosures would protect the mother's interest in her relationship with her child and her right to protect her child's life.

The Task Force also received powerful oral and written testimony from about 1,950 women who underwent abortions. Virtually all of them stated they thought their abortions were uninformed or coerced or both. They gave many different reasons, but there were also some common reasons. A majority of these women stated that they were not told the truth that the abortion would terminate the life of a living human being, and if they had been, they would not have submitted to the procedure because of their sense of duty and their relationship with the child.

Examples of this kind of testimony are found throughout the record. Lisa Strafford testified:

> "If I had known that there was an existing living human being whose life would be terminated, I would have factored that into my considerations, and I surely would not have submitted to the procedure, and I would not have consented to it." (Strafford Declaration, Par. 8.)

Ms. Strafford stated the reasons for her having her abortion would not have been sufficient to outweigh other considerations if she had known the procedure would terminate the life of an existing human being. This assertion was proven true when Ms. Strafford became pregnant

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submits to an abortion. Unfortunately, there are no record-keeping requirements with respect to the number of women who decide not to have an abortion at an abortion facility. There is a need for reporting requirements in this regard.

a second time while still in college. The circumstances that led her to seek an abortion when she discovered her first pregnancy were exactly the same with the second: she was a college student, unmarried, and having a child would have interfered with her studies. However, with her second child, she obtained information about her unborn child from a pregnancy help center before she went to the abortion clinic, and she decided against an abortion. She stated:

> "The most critical and important fact was the information I was given indicated that the child was already in existence and that the procedure wasn't going to somehow prevent a human being from coming into existence." (Strafford Declaration, Par. 12.)

Ms. Strafford explained that she then carefully examined the possibility of giving up her rights to adoption, but at the end of the pregnancy – having been given five or six months to examine all of the options and her feelings about them – she decided to exercise her right to keep her child and raise her son who is now 12 years old.

The testimony of the nearly two thousand women who had abortions is replete with references to how they were left to fend for themselves and allowed to make decisions based upon false assumptions of biological fact. The abortion providers wanted the women to make decisions about those biological facts themselves even though they had no expertise. Dr. Ball repeatedly stated that she wouldn't disclose biological facts about the fetus even if the women asked about them.

In addition, the doctor who proposes to terminate the life of a woman's child has authority to do so only after

obtaining the consent from the child's mother. For that authority to be valid, the mother must understand exactly what the doctor is proposing to do.

The Task Force therefore finds that the deliberate avoidance of a candid understandable disclosure that the child already exists and that the procedure will terminate the child's life, precludes an informed decision with regard to the woman's right to a relationship with her child and right to protect her child's life.

With regard to whether a woman's decision to have an abortion is voluntary, women have reported that they have submitted to abortions against their own desires because they felt pressured into the decision by the father of the child, or their parents, or other family members. Some studies demonstrate that more than half of the fathers of aborted children urged the mother to have an abortion upon first learning of the pregnancy. (Shostak, A. Et al, *Men and Abortion, Lessons, Losses and Love,* New York, Proejer (1981); Lien-Mak, F., et al, "Husbands of Abortion Applicants: A Comparison with Husbands of Women Who Complete Their Pregnancies" in *Social Psychiatry,* 14: 59-64 (1979). See also, Rue, V., "Abortion in Relationship Context" in *International Review of Natural Family Planning,* 9: 95-121 (1985).)

The process that takes place immediately before the abortion procedure also creates a coercive environment. The record reflects that women are pressured into making the decision quickly. And once they arrive the day of the

scheduled abortion, the process moves ahead without time to reflect.[16]

Another substantial problem is the fatal nature of the procedure. It is completely irreversible. The record is replete with women describing how they wanted to change their mind once the procedure was started. In some cases they begged the abortion doctor to stop, but they were told it was too late. The totally irreversible nature of the decision requires the need for complete and candid disclosures.

The Task Force finds that women are often subjected to coercion in the form of overt and subtle pressures from outside sources and from the abortion procedure itself that render their decision involuntary.

2. The Mother's Decision To Submit To A Medical Procedure That Puts Her Health At Risk Is Often Not Informed

The pregnant mother has an interest in her own health, and thus has a substantial interest in receiving accurate and full disclosure about the psychological and physical risks of abortion. This interest enjoys constitutional protection. (*Doe v. Bolton,* 440 U.S. 179 (1973).)

The substantial mental and physical health risks of the abortion procedure are discussed in Section II-E of this Report. We find that virtually none of the risks are disclosed

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[16] In contrast, with adoptions, the mother does not make a decision until after birth when she has had an opportunity to see and hold her child and the reality of what she is giving up is concrete. And special court proceedings are mandatory to ensure that her decision is voluntary and informed.

to the pregnant mother. In fact, in South Dakota, based upon the admissions of Dr. Ball, Ms. Looby, and the agents of Planned Parenthood, the abortion providers make misrepresentations of fact to the women. Among these misrepresentations are the following:

1. "Early abortion by vacuum aspiration is one of the safest procedures in all of medicine."

2. "A legal abortion, as it is performed in the United States today, is a very safe procedure and complications are rare."

3. "The emotion most women experience after having had an abortion is relief."

4. "Women may have some mixed feelings at this time but emotional problems after abortion are uncommon, and when they happen, they usually go away quickly."

5. "Serious long-term disturbances after abortion appear to be less frequent than after childbirth."

6. "The risk of dying from a full-term pregnancy and childbirth is at least seven times greater than that from early abortion."

The Task Force finds that the abortion providers fail to make disclosures they should make, make affirmative representations that are inaccurate, and misrepresent the risks of pregnancy and childbirth, all to the detriment of the pregnant woman and her ability to reach an informed decision.

E. The Effect And Health Risks That Undergoing Abortions Has On The Women, Including The Effects On The Women's Physical And Mental Health, Including The Delayed Onset Of Cancer, And Her Subsequent Life And Socioeconomic Experiences

The Task Force received and reviewed testimony from a number of distinguished experts in the field of obstetrics and gynecology (Dr. Elizabeth Shadigian and Dr. Ann Davis), sociology (Dr. Stanley Henshaw), psychiatry (Dr. Martha Shupping), psychology and human relations (Dr. Priscilla Coleman and Dr. Vincent Rue), medical ethics (Dr. David Reardon), public health (Marie Harvey), and human biology (Dr. Joel Brind). Most powerful, however, was the vast amount of testimony received into the record from post-abortive women who were willing to publicly share their experiences. After reviewing the lengthy and considerably referenced materials and testimony presented, the Task Force finds that there is a substantial discrepancy between current medical and psychological information and the medical and psychological information conveyed by abortion facilities (including Planned Parenthood of South Dakota) to their abortion patients.

1. Mental Health Effects

Dr. Priscilla Coleman is an Associate Professor of Human Development & Family Studies at Bowling Green State University in Ohio. She is a nationally and internationally recognized expert in the mental health risks of induced abortion, having conducted numerous scientific studies on this issue. The Task force finds the testimony she provided informative, comprehensive, and credible.

Dr. Coleman noted that many women have difficulty making a reasoned decision of whether or not to submit to an abortion. This ambivalence affects post-abortion adjustment. Studies she cited indicated that 1/3 to 1/2 of women considering abortion experience decision-making difficulty. (Husfeldt, 1995; Kero, 2001.) The decision conflict experienced by many women contemplating abortion is likely based on interpersonal, biological, moral, and spiritual factors. The ambivalence is often due to competing considerations and the fact that others are urging her to have an abortion she would prefer not to have. According to her and her colleagues' research, guilt is a commonly identified problem after an abortion, with estimates of half of the women experiencing this feeling. Thus, the choice to abort may frequently conflict with firmly held beliefs and values and result in conflicted decision-making, as well as difficulties coping after the abortion.

When a decision involves a violation of one's conscience, regression in cognitive functioning enables women to cope with the decision. Coleman cited studies indicating that abortion-related reasoning in young women is significantly lower than their general reasoning abilities. There can be no doubt that a pregnant mother considering an abortion is under stress, in crisis, and is vulnerable to the suggestions of others. However, after the stressfulness of the decision and the procedure have ended, women's cognitive abilities return to normal, often ushering in feelings of pronounced guilt, sadness, and regret.

Dr. Coleman noted that the literature on the psychological effects of abortion conducted over the last several decades indicates that a minimum of 10-20% of women experience adverse, prolonged, post-abortion reactions.

This translates into at least 130,000 to 260,000 new cases of serious mental health problems each year in the U.S.

In conducting research on the adverse mental health effects of abortion, Dr. Coleman emphasized to the Task Force that methodological weaknesses have been common in the body of post-abortion literature. Newer studies improve on the research defects seen in these older studies and are more methodologically rigorous.

In her testimony, Dr. Coleman provided a table summarizing 12 studies she and colleagues have published since 2002. She emphasized the fact that these studies were designed to address the shortcomings of earlier research in order to provide more reliable and valid results. Among the collective strengths of the studies are: (a) the use of an appropriate control group (unintended pregnancy carried to term); (b) controls for pre-existing psychological problems; (c) controls for third variables associated with the choice to abort; (d) use of prospective (as opposed to retrospective) data collection strategies; (e) use of medical claims data (with diagnostic codes assigned by trained professionals); and (f) use of large samples (most in the thousanda [sic] and many nationally representative).

Dr. Coleman highlighted key results of these studies and the Task Force finds the following mental health outcomes:

1. Based on methodological improvements characterizing these studies, prior works indicating that abortion is an emotionally benign medical procedure for most women are invalid and little reliance can be placed upon them;

2. In all the analyses conducted, women with a history of abortion were never found to be at a lower risk for mental health problems than their peers with no abortion experience;

3. Women with a history of induced abortion are at a significantly higher risk for the following problems: a) inpatient and outpatient psychiatric claims, particularly adjustment disorders, bipolar disorder, depressive psychosis, neurotic depression, and schizophrenia; b) substance use generally, and specifically during a subsequent pregnancy; and c) clinically significant levels of depression, anxiety, and parenting difficulties;

4. When compared to unintended pregnancies carried to term and other forms of perinatal loss, abortion poses more significant mental health risks; and

5. Cross-cultural data call into question the often-voiced view that psychological problems associated with abortion are socially constructed, as women living in a culture where abortion is normative and a much less volatile social issue, have been found to also suffer psychological effects of abortion.

The results of the four largest record based studies in the world have consistently revealed that women with a known history of abortion experience higher rates of mental health problems of various forms when compared to women without a known abortion history. (Coleman et al., 2002a: David et al., 1981; Ostbye et al., 2001; Reardon et al., 2003.) The two studies conducted in the U.S. (Coleman et al., 2002a; Reardon et al., 2003) used data from over 54,000 low-income women on state medical assistance in California. Women who had an abortion in 1989 with

possible subsequent pregnancies had significantly higher rates of outpatient psychiatric diagnoses than women who gave birth. This difference was apparent when data for the full time period were examined (17% higher) and when only data from women with claims filed on their behalf within 90 days (63% higher), 180 days (42% higher), 1 year (30% higher), and 2 years (16% higher) of the pregnancy event were considered. Data using the same sample and focusing on inpatient claims revealed similar findings.

Specific negative effects of abortion reported include the following:

1. **Guilt.** For women who believe that they have consented to killing a human being, the burden of guilt can be unbearable. The percentage of women reporting guilt associated with an abortion has been found to range from 29.7% to over 75%.

2. **Post-abortion anger and resentment.** Self-directed anger is a logical consequence if abortion violates an individual's conscience. Externally projected anger often results from an abortion decision that is the product of coercion from others, or a decision based upon misinformation by the abortion provider. In a study by Kero (2004), abortion-related anger was reported by 13% of a sample as they faced the abortion, and 14% one year later.

3. **Anxiety.** Women who submitted to an abortion experienced anxiety in various ways, including feelings of tension, physical responses (dizziness, pounding heart, upset stomach, headaches), worry about the future, difficulty concentrating, and disturbed sleep. Dr. Coleman cited an extensive review by Bradshaw and Slade (2003),

wherein the authors concluded that 30% of women who abort experienced clinical levels of anxiety and/or high levels of general stress.

In a study by Cougle, Reardon, and Coleman (2005) using data from the 1995 National Survey of Family Growth, women who aborted an unintended pregnancy, when compared to women who carried an unintended pregnancy to term, were 34% more likely to experience Generalized Anxiety Disorder. This study is particularly noteworthy because women who reported a period of anxiety before their first pregnancy were excluded from the analyses.

4. **Posttraumatic Stress Disorder (PTSD).** Individuals with PTSD experience symptoms of avoidance (efforts to escape from reminders of the event), intrusion (unwanted thoughts, nightmares, and flashbacks related to the event), and arousal (exaggerated startle reflex, sleep disturbance, irritability) for a month or more following exposure to a traumatic event.

   In a study led by Rue, 14.3% of Americans sampled, and just under 1% of the Russian women sampled, met the full diagnostic criteria for PTSD.

5. **Psychological numbing.** People who experience extreme psychological distress will sometimes respond by avoiding future situations likely to cause emotional upset, and they experience a restricted range of emotions.

   Rue and colleagues (2004) found that 12% of the American women and 3% of the Russian women reported feeling emotionally numb as a direct result of the abortion.

6. **Depression.** Many women with a history of abortion will experience symptoms of depression including the following: sad moods, sudden and uncontrollable crying episodes, low self-esteem, sleep, appetite, and sexual disturbances, reduced motivation, and disruption in interpersonal relationships.

   In a recent study led by Reardon (2003), employing a nationally representative, racially diverse sample, controlling for prior psychological state and several other variables, as well as an extended time frame, women whose first pregnancies ended in abortion were 65% more likely to score in the "high risk" range for clinical depression, compared to women whose first pregnancy resulted in a live birth.

7. **Suicidal ideation.**

8. **Substance abuse.** Accumulating evidence indicates that abortion increases the risk for substance use post-dating the procedure. Dr. Coleman cited several studies, which are also summarized in a review paper she recently published in *Current Women's Health Reviews.* A few examples are provided below.

   Reardon and Ney (2000) found that among women with no prior history of substance abuse, those who aborted, when compared to those who continued to term, were 4.5 times more likely to report subsequent substance abuse. Eighty-nine percent of the women reported the onset of substance use to be within three years of the abortion.

   Using data from a nationally representative sample, Coleman and colleagues (2002) published a study in the *American Journal of Obstetrics and*

Gynecology indicating that pregnant women with a prior history of abortion, compared to women without a history, were 10 times more likely to use marijuana, 5 times more likely to use various illicit drugs, and twice as likely to use alcohol.

In a paper published in the *American Journal of Drug and Alcohol Abuse*, using data from the National Longitudinal Survey of Youth, Reardon, Coleman, and Cougle (2004) found that women who aborted were twice as likely to use marijuana, and reported more frequent use of alcohol, after controlling for age, race, marital status, income, education, and prior psychological health.

9. **Relationship problems.** The stress associated with an abortion can cause strain on intimate relationships. Studies have specifically found that abortion is related to an increased likelihood of sexual dysfunction, communication problems, and other relationship difficulties, including separation or divorce. For example, Rue et al. (2004), found that 6.2% of the Russian women and 24% of the American women sampled reported sexual problems that they directly attributed to a prior abortion. In a review, Bradshaw and Slade (2003) concluded that 10-20% of women experience sexual problems in the early weeks and months after an abortion, while 5-20% of women report sexual difficulties a year later.

10. **Parenting.** Research suggests that emotional difficulties and unresolved grief responses associated with perinatal loss may hinder effective parenting by reducing parental responsiveness to child needs, interfering with attachment processes, instilling anger, which is a common component of grief, or by increasing parental anxiety

about child well-being. A study recently published in Thailand revealed that 43.2% of the women sampled experienced moderate to severe grief 2 weeks post-abortion.

In a study published by Coleman and colleagues (2002) in the *Journal of Child Psychology and Psychiatry and Allied Disciplines,* using a nationally representative sampling, the results indicated lower emotional support in the home among first-born children ages 1-4 of mothers with a history of abortion, and second- and third-born children ages 1-4 of divorced mothers experienced lower levels of emotional support than children of non-divorced women. Decreased emotional support was not observed among children of divorced women with no history of abortion.

In a second study published in *Acta Pediatrica,* Coleman and colleagues (2005) found that compared to women with no history of induced abortion, those with one prior abortion had a 144% higher risk for physical child abuse, but a history of one miscarriage/ stillbirth was not associated with increased risk of child abuse.

Dr. Marie Harvey testified before the Task Force. She is a professor of Public Health at Oregon State University and Director of the Research Program on Women's Health at the University of Oregon. She has worked in the area of reproductive health for women for over 25 years, including providing abortion counseling. Dr. Harvey is an active proponent of the view that abortion does not cause psychological harm in women. Dr. Harvey expressed the view that "deliberate disinformation" is spread for ideological reasons, though she cited no research to corroborate her opinion. Dr. Harvey also testified that (1) early in pregnancy maternal fetal attachment is not relevant and (2)

maternal fetal attachment is not a reality because studies have not been able to measure it, despite widespread personal experiences of mothers.

With respect to informed consent, Dr. Harvey testified: "Because the decision to continue or to terminate the pregnancy is a very complex one, it's critical that women be provided comprehensive and accurate information about their options. Information should be consistent with current medical and psychological science and based on findings from the most rigorous and objective studies. It is critical that women not be given misinformation about the mental health consequences of having an abortion."

Dr. Harvey testified, as well, that major medical and mental health professional organizations support her belief that post-abortion depression is without foundation in scientific studies. Her belief is that if the American Psychological Association (APA), for example, concludes that abortion has no lasting or significant health risks, that this determination is made by an objective scientific organization of psychologists.

The Task Force is aware that the APA has submitted various amicus briefs before the U.S. Supreme Court supporting abortion rights and in opposition to any abortion regulations, including parental involvement in a minor child's abortion decision making. Further, the APA's position does not represent that, of the majority of its membership, but rather, the opinions of a group of members on various committees of interest. It has also advocated and supported other controversial positions on homosexuality and redefining child sexual abuse.

Dr. Harvey also believes that in post-abortion research, association does not mean causation and that

women should therefore not be advised of any possible adverse emotional outcomes. We do not find this position credible, as it contradicts her earlier opinion. Clearly in the public interest, consistent association, controlling for associated variables, and time order preceding the outcome, all suggest a strong likelihood of harm. The Task Force recognizes and takes notice that other public health interests, such as smoking and cancer, are based upon correlational data and that the correlative studies are considered predictive of adverse outcome. The Task Force, based on other evidence and testimony, fails to concur with Dr. Harvey's conclusions.

Dr. Martha Shuping is a psychiatrist and conveyed the wealth of many years of clinical experience treating patients suffering from negative effects of abortion. The Task Force finds her testimony persuasive due to her training, psychiatric practice, and research. Her experiences are consistent with the broad range of adverse psychological symptoms described by Dr. Coleman in her review of the literature. Dr. Shuping contended that the source of much of the psychological suffering evidenced in the lives of women who have aborted can be traced to the biologically based attachment processes that occur during pregnancy.

Further, the Task Force finds that the pre-abortion counseling provided often does not prepare women who have abortions for the psychological outcomes they may experience after their abortions. In addition, women who receive little or no information about possible emotional health risks of this procedure may significantly compromise their mental health and the quality of their lives for years to come. Due to the very limited information disclosed by abortion providers, women are not fully aware

that abortion carries with it the potential to damage their physical, emotional, interpersonal, and spiritual well-being.

Perhaps worse, the pregnant mother is not told prior to her abortion that the procedure will terminate the life of a human being. The psychological consequences can be devastating when that woman learns, subsequent to the abortion, that this information was withheld – information that would have resulted in her declining to submit to an abortion. Her anger at being deceived and being prevented from making an informed decision for herself is exacerbated by her realization that she was implicated in the killing of her own child in utero. Aside from the injustice of her being deprived of making her own informed decision (see Section II-D), the psychological harm of knowing she killed her child is often devastating.

This very phenomena was recognized and acknowledged by the U.S. Supreme Court in *Planned Parenthood v. Casey*, 505 U.S. 833, 882 (1992):

> "Nor can it be doubted that most women considering an abortion would deem the impact on the fetus relevant, if not dispositive, to the decision. In attempting to ensure that a woman appreciates the full consequences of her decision, (by requiring the doctor's disclosure) the state furthers the legitimate purpose of reducing the risk that a woman may elect an abortion, only to discover later, with devastating psychological consequences, that her decision was not fully informed."

The Task Force finds that it is simply unrealistic to expect that a pregnant mother is capable of being involved in the termination of the life of her own child without risk

of suffering significant psychological trauma and distress. To do so is beyond the normal, natural, and healthy capability of a woman whose natural instincts are to protect and nurture her child.

2. Physical Health Risks

The record reflects that abortion places women at increased risk of physical injury including the risk of: infection, fever, abdominal pain and cramping, bleeding, hemorrhage, blood transfusion with its subsequent risks, deep vein thrombosis, pulmonary or amniotic fluid embolism, injury to the cervix, vagina, uterus, Fallopian tubes and ovaries, bowel, bladder, and other internal organs, anesthesia complications (which are higher with general anesthesia), failure to remove all the contents of the uterus (leaving behind parts of the fetus/baby or placenta), need to repeat the surgery, possible hospitalization, risk of more surgery such as laparoscopy or exploratory laparotomy, possible hysterectomy (loss of the uterus and subsequent infertility), allergic reactions to medicines, misdiagnosis of an intrauterine pregnancy with a tubal or abdominal pregnancy being present (which necessitates different treatment with medicines or more extensive surgery), possible molar pregnancy with the need for further treatment), emotional reactions (including but not limited to depression, guilt, relief, anxiety, etc.) death of the woman, and risk of a living, injured baby.

The record reflects that abortion places women at increased risk of other long term physical injury including placenta previa (a condition that necessitates a c-section and has higher rates of complications) and pre-term birth in subsequent pregnancies (births before 37 weeks gestation,

many of which require neonatal intensive care unit stays for babies and higher rates of death).

Dr. Elizabeth Shadigian is an associate professor of Obstetrics and Gynecology at the University of Michigan Medical School. She presented testimony that addressed physical complications associated with abortion, noting that approximately 10% of women undergoing induced abortion will suffer immediate complications, of which approximately one fifth (or 2%) are considered life threatening. Rates of complications increase with greater gestational age of the pregnancy.

In the most recent edition of medical opinions set forth by the American College of Obstetricians and Gynecologists (Compendium of Selected Publications, 2005, Practice Bulletin #26), ACOG states: "Long-term risks sometimes attributed to surgical abortion include potential effects on reproductive functions, cancer incidence, and psychological sequella. However, the medical literature, when carefully evaluated, clearly demonstrates no significant negative impact on any of these factors with surgical abortion." The Task Force disagrees with this statement due to other testimony and materials.

The National Center for Health Statistics provides maternal mortality information and the Center for Disease Control provides abortion mortality statistics. Planned Parenthood continues to cite statistics issued by the CDC to claim that "the risk of dying from a full-term pregnancy and childbirth is at least seven times greater than that from early abortion."

The Task Force finds this statistic to be false and very dangerous for women who rely upon it. The CDC statistics are not a reliable basis for determining death rates due to

abortion, and the U.S. Department of Health and Human Services has expressly stated that their statistics should not be used for that purpose. These statistics grossly understate death due to abortion for a variety of reasons. Although the fact that it is a department of federal government implies an aura of authenticity, the CDC is not funded, or under any mandate, to obtain comprehensive and accurate data on deaths due to abortion. The limited data it does supply is not intended to be used the way Planned Parenthood uses it.

Second, the statistics for maternal mortality rates issued by the National Center for Health Statistics cannot be compared with the incomplete statistics for death due to abortion issued by the CDC because the standards and methods of data collection used by these two systems are very different. The Department of Health considers the data on death due to maternity as highly reliable, while the data from the CDC concerning death due to abortion is unreliable and grossly understated.

Specifically, when a death is violent, a recent abortion is virtually never mentioned. The CDC confines the definition of maternal death to those occurring during pregnancy or within 6 weeks of the termination of pregnancy. In addition, coding rule 12 of the ICD-9 requires deaths due to medical and surgical treatments be reported under the complication of the procedure (e.g., infection) rather than the treatment (e.g., elective abortion). Thus, complications from abortion that result in death – even though the abortion was a competent and significant contributing factor, are not included in the statistics relating to death due to abortion.

Third, the number of maternal deaths is substantially underestimated if death certificates alone are used to identify deaths, as is usually the case in reporting to the CDC. The Department of Health issued a public letter. In it, the CDC admits that death certificates that they rely upon do not usually give the cause of death, and it is clear that when abortion causes death, it is virtually never on a death certificate. A research study from Finland revealed that death certificates revealed only 6% of all abortion-related deaths. Based upon that study, deaths due to abortion may be 16 times greater than deaths reported based upon death certificates.

Finally, it is clear that the CDC statistics do not include the vast majority of deaths due to abortion because they do not include deaths from suicide, deaths from physical complications from abortions, and deaths due to any of the cancers in which abortions may be a significant contributing factor.

In fact, studies not relying on the above sources of data, have shown a higher risk of death associated with abortion compared to childbirth:

1. Gissler and colleagues (1997) reported post-pregnancy death rates within one year that were nearly 4 times greater among women who aborted their pregnancies than among women who delivered their babies. The suicide rate was nearly 6 times greater.

2. Reardon and colleagues (2002) found that women who aborted when compared to women who delivered, were 62% more likely to die from any cause. Increased risk estimates associated with specific causes of death were also identified in

the study: violent causes – 81%, suicide – 154%, and accidents – 82%.

3. A study by Gissler and colleagues (2004) indicated the mortality rate was lower after a birth (28.2 per 100,000) than after an induced abortion (83.1 per 100,000).

4. In Gissler and colleagues' (2005) most recent publication, an age-adjusted induced abortion related mortality rate from all external causes (homicide, suicide, and unintentional injuries) of 60.3 per 100,000 was observed in comparison to a 10.2 age-adjusted mortality rate per 100,000 for pregnancy or birth. For suicide, the age-adjusted mortality rate for abortion was 33.8, compared to 5.5 for pregnancy or birth.

Dr. Shadigian noted that physicians, policy makers, medical governing bodies, and society in general, should be informed of the inadequate manner in which maternal death and pregnancy-associated death are reported, thus grossly underestimating the risk of death from abortion.

The Task Force finds that the above identified physical health risks are significant and important for women in considering whether or not to obtain an abortion. Dr. Shadigian's testimony is credible and comprehensively reports current phy[illegible]al health risks that are not included in pre-abortion informed consent materials for South Dakota women.

Dr. Stanley Henshaw also provided testimony on the physical and mental health effects of abortion. He is an advocate for reproductive choice. He has been Deputy Director of Research for the Alan Guttmacher Institute, a Planned Parenthood special affiliate which is partially funded by Planned Parenthood Federation of America.

Dr. Henshaw read several excerpts from papers published by Coleman and her colleagues suggesting that the authors themselves claimed causality that could not be determined by the evidence in their studies. He further noted that in order to determine cause and effect, researchers need to control for confounding variables associated with the choice to abort.

Dr. Coleman provided testimony that the issue of causality cannot be resolved in the context of a single study, necessitating review of the accumulated evidence. She further noted that the question of causality is often complex in the social/psychological sciences when the focus of one's investigation involves human behavior. Manipulation of variables is not possible for obvious ethical reasons. In the studies she has conducted with colleagues in recent years, many controls for pre-existing psychological problems, intendedness of pregnancy, and demographic, personal, and situational factors predictive of the choice to abort have been implemented. Prospective or longitudinal data collection methods, which enable demonstration of the time sequence between the cause and the effect, also help to build the case for causality, and 9 of the 12 studies in Dr. Coleman's table of recent publications were prospective, as opposed to retrospective, in nature.

Dr. Henshaw provided basic descriptive data pertaining to abortion rates, indicating that poor, never married, and adolescent women choose abortion most frequently. He also provided information regarding the percentage of abortions according to weeks of gestation in 2001. Nearly 11%, or 143,000 of the 1.3 million abortions performed annually in the U.S. occur in the second and third trimesters.

Dr. Henshaw made the claim that the availability of abortion services in the U.S. has had positive effects on children. He specifically made assertions indicating that since *Roe v. Wade*, lower rates of neonatal mortality, low birth weight, pre-term delivery, abandoned infants, infant homicide, birth defects (including Down syndrome), and children unwanted by their parents have been observed. Several Committee members challenged these assertions, pressing Dr. Henshaw to explain how causality could possibly be determined when examining broad societal trends like these. Dr. Henshaw was not able to provide substantiation, that the Task Force found convincing, for his claims.

Numerous cultural factors are implicated in gains observed in children's health over the past three decades, including improvements in medicine, educational interventions, and prevention programs. Given the scientific impossibility of drawing causal conclusions from general trend data, Dr. Henshaw's credibility is called into question by his efforts to infer that abortion has played a causal role in any beneficial improvements in children's health, let alone implying that the elimination of children with fetal defects or anomalies is somehow beneficial to society.

One memorable moment in the hearings before the Task Force occurred on September 21, 2005, the first day of public hearings. Dr. Henshaw displayed a chart entitled "Healthier Children." It stated that because of abortion there are "fewer abandoned infants." This was advanced as a reason to support legal abortion. The Task Force concludes that this logic is emblematic of some of the reasoning advanced by the pro-abortion advocates that

testified before the Task Force, even some of those who testified as experts.

Likewise, Dr. Henshaw's chart listed as an improvement to the health of children that it is suspected that there are "fewer infant homicide victims." Thus, Dr. Henshaw argues that it is better for the health of children that the lives of 1.3 million children be terminated each year because he suspects that a very small number of them may have died from other means. Rather than belabor the illogical nature of this abortion advocacy reasoning, we include Dr. Henshaw's "Healthier Children" chart as Exhibit C to this report.

Dr. Henshaw's charts merit one last comment from the Task Force. He argues that because of abortion, there are "fewer children with the handicaps of being unwanted by their parents." The Task Force record is replete with evidence that in the overwhelming majority of cases when women are given an informed and voluntary choice, they raise the children themselves. The mere fact that a pregnancy was unplanned does not mean that the child will be unwanted after birth.

Although we received compelling evidence that large percentages of women wished they did not have their abortion, we found no evidence that women who decided to keep the children ever regretted it. There is simply no evidence that the parenting of children who are "unwanted" is any way affected by the availability of legal abortion.

3. Breast Cancer

The question concerning whether abortion causes an increased risk for breast cancer cannot be answered by this Task Force based on the record. However, the subject is of vital importance and the reasons to suspect such a connection sufficiently sound. We conclude that further study of this topic is justified and needed. Sorting out the science and truth of this matter is of the utmost importance so that relevant informed consent information can be provided to women considering an abortion.

F. The Nature Of The Relationship Between A Pregnant Woman And Her Unborn Child

The Task Force received testimony and submissions concerning the relationship between a pregnant mother and her child during pregnancy. Of all human relationships, the relationship between a mother and her unborn child is unique in both its biological and psychological nature.

Biologically, as has already been noted, the mother detects the presence of the child at the end of its first week of life when it prepares for attachment to the mother's uterine wall. As Dr. Mark stated, at the pre-implantation age, the child synthesizes a platelet activating factor (PAF) (discovered by O'Neil in 1991), beginning at the one cell age, that enhances the child's ability to implant into his or her mother's uterine wall; and at 7.5 days old, before implantation into the uterus, the child begins to produce an enzyme (IDO) that inhibits the mother's immune system from attacking and rejecting the child (discovered by Mann, et al in 1998). (Mark Declaration, P. 25-26.) The

mother often experiences symptoms of "morning sickness" shortly thereafter, trumpeting the arrival of her child.

Psychologically, Dr. Anne C. Speckhard, a professor of psychiatry at Georgetown University Medical School in Washington, D.C., contributed to Chapter 4 of the comprehensive work *Death and Trauma, The Traumatology of Grieving,* Figley, C.R., Bride, B.E. & Mazza, N. (Eds.), Taylor & Francis (1996). Chapter 4, entitled "Traumatic Death in Pregnancy: The Significance of Meaning and Attachment," addresses the nature of attachment between the mother and the child in utero. Dr. Speckhard observes:

> "Leifer's research, as well as other clinical and small research studies of the psychological processes of parental attachment in pregnancy (Borg & Lasken, 1989: Conden, 1986; Gilbert & Smart, 1992; Klauss & Kennel, 1976; Peppers & Knopp, 1980; Speckhard, 1985; 1987), have consistently reported that for the pregnant woman, attachment often begins *shortly after conception*; but far before birth . . . " (*Id.* at P. 74 (emphasis added)).

Other studies also demonstrate that a mother's bond with her child (and the child's attachment to her) begins during pregnancy and even at its early stages: Klaus and Kennel, "The Family During Pregnancy," in *Parent Infant Bonding,* 1-2 (1982); Lumely, "Attitudes to the Fetus Among Primigravidae," *Australian Pediatric J.,* 106, 108 (1982); Leister, *Psychological Effects of Motherhood,* at 76 (1980); 1&2, J. Bowlby, *Attachment & Loss,* (1969, 1973); M. Mahler, *The Psychological Birth of the Human Infant,* (1975); Sugarman, "Parental Influences in Maternal Infant Attachment," 47 *Am. J. Ortho – Psychiatry* (1977).

Dr. Martha Shuping also testified about this relationship and referred to Dr. Speckhard's above-referenced book in her testimony. Dr. Shuping holds an MD from Wake Forest University School of Medicine and completed her psychiatric residency at North Carolina Baptist Hospital in 1988. She also has an MA in Pastoral Ministry from the University of Dayton.

Dr. Shuping testified that biological, psychological, and emotional attachments occur early in the pregnancy, as evidenced by intuitive responses in the mother, such as cravings, nausea, changes in the woman's breasts, and aversions to certain foods and other substances. Further, when a mother has an ultrasound and sees the child on the screen, she instinctively puts her hand on her belly to touch her child.

Dr. Vincent Rue, Ph.D., Institute of Pregnancy Loss, Jacksonville, Florida, also addressed certain aspects of the relationship between mother and child in utero in his testimony. Dr. Rue received his Ph.D. in Family Relations from the University of North Carolina in 1975. For 27 years, Dr. Rue has been a practicing psychotherapist and has served on the faculty of California State University at Los Angeles and United States International University in San Diego. In 1981, Dr. Rue provided the first clinical evidence of post-abortion trauma, identifying this psychological condition as "Post-abortion Syndrome" in testimony before the U.S. Congress. During the Reagan Administration, he was a special consultant to the U.S. Surgeon General, Dr. C. Everett Koop on abortion morbidity.

Again, the conclusions reached by Dr. Speckhard, Dr. Shuping, and Dr. Rue are: the attachment between mother and child begins almost immediately after conception and

the basis of maternal attachment is both psychological and physical, and this process, and the natural protective urges of maternal attachment, often form irrespective of whether the pregnancy was intended or wanted.

This unique mother-child relationship, with the developing bond and attachment, benefits both the child and mother. (Klaus and Kennell, *supra.* at 3.) At the same time the bond helps the mother to transfer her interest from herself to her child, and to prepare her for her unique role in the child's life. (Sugarman, "Parental Influences in Maternal Infant Attachment," 47 *Am. J. Orthopsychiatry* 407 (1977).) This accounts for the fact that a mother is the principle attachment figure for a child. (Bowlby, "Attachment and Loss," Vol. I *Attachment,* at 304 (1969).)

Studies have demonstrated the subjective and conscious awareness that mothers have concerning their bonding with their children during pregnancy. In the second trimester, 63% of women expressed attachment with the child and 92% expressed such attachment during the third trimester. Bonding even occurs in a large percentage of cases in the first trimester. (Lumely, "Attitudes to the Fetus Among Primigravides" *Australian Pediatric J.*, 106, 108 (1982).) Mothers talk to the fetus and stroke it. (*Id.* at 109.) Increased sensitivity to the child follows the experience of "quickening" when women can feel the baby move. (Klaus and Kennell, *supra,* at 13; Leister, "Physiological Effects of Motherhood," at 76 (1980).)

Most noteworthy are the conclusions of many researchers, as discussed in Section II-E of this Report, that the traumatic disruption of this attachment bond is capable of causing enduring psychological damage. Specifically, breaking this bond by abortion is detrimental to

the health of the mother *(See,* Ortof, "Psychological Aspects of Abortion" in B. Blum, *Psychological Aspects of Pregnancy, Birthing and Bonding* (1980)) even when the termination of pregnancy is the presumptive desired result. (Speckhard, 1985, 1987a, 1987b; Speckhard & Rue, 1992, 1993.) (See, Speckhard, "Traumatic Death in Pregnancy" in *Trauma and Death,* Figley, et al, P. 75.)

Dr. Shuping also related that her seventeen years of clinical practice experience as a psychiatrist in Winston-Salem, NC, and numerous published studies, confirm that trauma is evident within the mother when these attachments are broken. Grief or posttraumatic stress after abortion is common. Dr. Shuping also testified that just because a woman considers an abortion does not mean that she has not bonded with the child.

It should also be noted that in South Dakota the law recognizes the fact that the child is a separate human being. Under South Dakota criminal law, criminal conduct that results in the death of the unborn child, at any age of gestation, is a homicide. (SDCL 22-16-1.) The tortious death of an unborn child, at any age, gives rise in South Dakota to a claim for wrongful death. (*Wiersma v. Mapleleaf Farms,* 543 N.W. 2d 787 (SD 1996).) The wrongful death damages are awarded based upon the loss of the relationship a mother has with her unborn child. The loss is measured over the natural life span of the relationship, as it would have otherwise continued to exist throughout the lives of mother and child. (*Id.*)

The Task Force therefore finds that a mother's unique relationship with her child during pregnancy is one of the most intimate and important relationships, worthy of protection. The history and tradition of our nation has

recognized this relationship as one that has intrinsic beauty and benefit to both the mother and the child, and it is recognized as one of the touchstones, and at the core, of all civilized society.

G. Whether Abortion Is A Workable Method For The Pregnant Woman To Waive Her Rights To A Relationship With The Child

The Task Force finds, based upon all of the evidence presented, that an abortion is a completely unworkable method for a pregnant mother to waive her fundamental right to her relationship with her child.

Abortion, as we have discussed, is almost always not a procedure to treat a medical condition, but rather a method for the mother to postpone child-rearing, and is therefore, a method for a woman to give up her right to her relationship with her child.

A mother's unique relationship with her child during pregnancy is one of the most intimate and important of relationships, and worthy of protection. The unique bond between mother and child creates a human relationship that may be the most rewarding in all of the human experience.

It is for these reasons that our laws have traditionally protected the mother. Our laws dealing with surrender of the mother's rights in the context of adoption, for example, are based upon the premise that the mother's intrinsic natural right is fundamental, and its termination is a great loss to the mother.

The unworkable nature of using abortion to waive a woman's right to her relationship with her child is manifest in numerous ways.

First, as previously noted, in the abortion procedure, the woman is not told that her child already exists. However, even if it were to be disclosed, such oral representations are not an effective substitute for the mother seeing her child through ultrasound or holding her child in her arms before making such a life-changing decision.

Second, this method of waiver is completely fatal and irreversible. In the context of adoption, the mother can change her mind on numerous occasions before the child is born, and even after she files a petition in court expressing her intent to give up her rights, she can revoke that petition. In addition, her decision must be certified to the court, and her rights cannot be terminated if the court record does not support the finding that her decision was informed. *J.M.J.*, 368 N.W. 2d 602 (S.D. 1985).

Third, it is unworkable that a matter of such importance is entirely entrusted to abortion providers whose interests and philosophies are in direct conflict with the interests of the mother in her relationship with her child. As Dr. Willke testified, the abortion providers are in the business of terminating the mother's relationship. Even when the pregnant mother has the entire nine months of pregnancy to investigate her options and reach a reasoned decision about whether to parent her child, the law does not entrust the termination of the mother's rights to an adoption agency. Only a court of law, after a hearing, can terminate the mother's rights.

Fourth, the procedure is, as has been seen, inherently coercive. The inherent coercion precludes this method from

being an appropriate way for the mother to give up her right.

Fifth, this method of waiver of the mother's rights expects far too much of the mother. It is so far outside the normal conduct of a mother to implicate herself in the killing of her own child. Either the abortion provider must deceive the mother into thinking the unborn child does not yet exist, and thereby induce her consent without being informed, or the abortion provider must encourage her to defy her very nature as a mother to protect her child. Either way, this method of waiver denigrates her rights to reach a decision for herself.

Sixth, this method of waiver unnecessarily subjects women to physical and psychological injury.

Seventh, unlike the adoption procedure, it is difficult for the state to supervise the abortion process to insure that the mother is not exploited and her rights are adequately protected.

The price to society to permit this injustice to women is too great. Our state must not overlook the harm to the mother and the fact that her fundamental rights are often terminated without informed or voluntary consent, and we must not overlook the injustice of the loss of life that results from abortion.

H. Whether The Unborn Child Is Capable Of Experiencing Physical Pain

The Task Force received a substantial amount of technical evidence concerning the question of whether an unborn child is capable of experiencing pain. Dr. Mark

Rosen, an obstetrical anesthesiologist, testified by telephone, and Dr. Byron C. Calhoun, who appeared before the Task Force, both addressed this topic. The Task Force also received substantial written submissions and reports on this topic which we found important and helpful.

Since the time of *Roe v. Wade*, a number of generally accepted assumptions about human neurological development and our ability to feel pain have been refuted. The first assumption was that neonates were incapable of feeling pain.[17] The second assumption was that myelinated nerve fibers were necessary for pain perception, and since they did not form completely until after birth, pain perception was a late developmental event. The third assumption was that pain experience required pain-detecting nerves connected to the thalamus and then to the brain cortex; furthermore, there was presumed to be a period of cortical maturation necessary before pain could be experienced. All of these assumptions were based upon gross histological observations.

It was only in the last 20 years that the traditional concept accepted at the time of *Roe*, that even normal neonates cannot feel pain, was first challenged.[18] It had been assumed by the medical community that a fully developed and mature cortical brain region was necessary for pain perception. This assumption, it became clear, was

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[17] Porter, F. "Pain in a Newborn," *Neonatal Neurology, Clinics in Neonatology*, 16 (2) p. 549 et seq. (1989).

[18] Fitzgerald, M; and McIntosh, N. "Pain and Analgesia in the Newborn." *Arch Dis Child* 64 (1989): 441-443, at p. 441.

inconsistent with the observations of caregivers for premature infants.[19]

Biochemical studies have supported the observations of caregivers concerning pain experiences. Studies on unborn and premature infants have demonstrated that the developmental time when pain is experienced was earlier than had been previously understood. Detailed hormonal studies in pre-term neonates undergoing surgery under minimal anesthesia have shown marked release of catecholamines, as well as autonomic nervous stimulation, heart rate changes, increased hormonal activity and increase motor activity. These activities are consistent with stress experienced with pain.[20] It has been documented that endocrine and metabolic responses associated with pain are abolished by giving anesthesia to pre-term neonates[21] and to the fetus.[22]

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[19] One of whom stated eloquently:

> "It has generally been assumed that the ability of a child to feel pain increases with age and that neonates may not perceive pain or may perceive it only minimally. Assumed by whom? Certainly not by those of us at the bedside of critically ill infants, who see them flinch from procedures, startle in response to loud noises, and turn from bright lights and various other forms of stimulation. Not by those who have heard infants' anguished cries and seen their vigorous withdrawals from painful stimuli. Not by those who have observed their increased heart and respiratory rates and profuse sweating in response to heel sticks or circumcision. And finally, not by those who have seen babies gasp for every breath as they die from incurable lung disease."

Fletcher, A.B. "Pain in the Neonate." *N Eng J Med* 317 (1987): 1347-1348, at p. 1347.

[20] Rosen, M.A., *Anesthesia for Procedures Involving the Fetus* (1991), Seminars in Perinatology 15:410-417.

[21] Levine, A.H. (1991), Fetal Surgery, Aorn J, V54 (1): 16-19, 22-27, 30-32, at p. 27. Rosen, M., "Anesthesia and Monitoring for Fetal

(Continued on following page)

Based upon these and other studies, standard medical practice has changed. A New England Journal of Medicine editorial stated:

> "Any decision to withhold anesthetic agents ought not to be based on the infant's age or *perceived degree of cortical maturity*; it should be based upon the same criteria used in older patients.[23] (Emphasis added).

In the current state of medicine, with operative procedures being performed on premature babies as early as four months, it is a standard medical practice to anesthetize the child (at any age).[24] Thus, as of 1989, it was known that premature babies could experience pain, and the standard practice of medicine came to require anesthetizing all neonates and all pre-term infants. The more difficult question was at what age did the unborn child first have the ability to feel pain? Virtually all questions surrounding the unborn child, and how he or she should be treated, or viewed, evince disagreement. The question concerning the ability of an unborn child to experience pain is no different.

Intervention" In *The Unborn Patient* 2nd ed., (1991), Harrison (editors), W.B. Saunders Co. P. 176, at p. 176.

[22] Fletcher, A.B. "Pain in the Neonate." *N Eng J Med* 317 (1987): 1347-1348, at p. 1348.

[23] *Id.*

[24] Porter, F. "Pain in a Newborn," *Neonatal Neurology, Clinics in Neonatology*, 16 (2) p. 549 et seq. (1989). For general discussion of medical practice for pain relief for neonates see: Choonara, I., *Management of Pain in Newborn Infants*, in Seminars on Perinatology, 16(I): 32040 (1992), Malhortora, N., L. Han, *Privilege of Analgesia in the Neonate*, in Seminars in Perinatology, 15 (5): 418-422 (1991).

There are today, however, areas of agreement. We find that it is generally accepted that the unborn child can experience pain beginning at 23 or 24 weeks post-conception. This fact seems to be generally accepted by both proponents and opponents of abortion. Dr. Mark Rosen, an obstetrical anesthesiologist, was invited to testify by members of the Task Force who support abortion. Dr. Rosen acknowledged that the unborn child can experience pain beginning somewhere between 23 and 29 weeks post-conception. Dr. Byron Calhoun testified that the evidence supports the conclusion that the unborn can feel pain much earlier than 24 weeks. There are some scientists who suggest that there is evidence which cannot be ignored, that the unborn child can experience pain perhaps as early as 7 to 8 weeks post-conception, and others who do not rule out pain perception at 5½ weeks post-conception.

In order to provide guidance to the Legislature, we examined the evidence and literature and we find that:

a. It is almost universally accepted that the unborn child can experience pain by 24 weeks after conception.

b. The evidence supports the conclusion that the unborn child experiences pain by 20 weeks post-conception, at the latest.

c. That there is a considerable body of evidence, increasing in recent years, that the unborn child may experience pain as early as 11 weeks post-conception.

d. It is possible that the unborn child experiences pain as early as 7 weeks post conception.

1. The Nature of Pain and Pain Transmission

The main issue of contention is whether it is necessary for the unborn child to have a functioning cerebral cortex in order to have pain experiences. It is Dr. Rosen's contention that it is necessary. He and all of current modern science recognize that all other neurological functioning for pain transmission is in place early in gestation. The question, therefore, is whether: (1) is the presence of consciousness necessary in order to experience pain; and if so, (2) is the cerebral cortex the only site of consciousness at a level necessary for pain experience?

To answer these questions, an understanding of what pain transmission capabilities are found in the early embryo and fetus and how pain is transmitted and experienced in the human being is necessary.

The neuropeptide, Substance P, was first discovered in mammalian brain and intestine by Euler and Gaddum (J. Physiolo. 72:74, 1931). The presence of Substance P, known to be a pain transmitter, was not observed in the human being during the gestational period until the late 1980s. Since then, its role in pain transmission through activation of a subpopulation of the primary afferent C nerve fibers has been well-documented (Masanori et al., Cell. Mol. Neurobiol. 10:293, 1990; Mantyh et al., Science 278:275, 1997). The Substance P releasing primary efferent C fibers terminate in the superficial layers of the spinal dorsal horn (Cuello et al., Lancet 1:1054, 1976) and form synapses with second-order neurons in the dorsal horn of the spinal cord (DiFiglia et al., Neuroscience (7:1127, 1982). Many of these second-order neurons in this region of the spinal cord express the Substance Preceptor

(Marshall et al. Neuroscience 72:255, 1996) and transmit the nociceptive information up to the brain. The role of Substance P in transmitting a highly noxious stimulus was clearly demonstrated in 1997 by the work of Mantyh et al., in which they selectively ablated the neurons in lamina I of the spinal cord in mice and thus attenuated the responses of the animals to highly noxious mechanical and thermal hyperalgesia.

The neuropeptides, enkephalin (Konshi et al., Nature 294:80, 1981) and beta-endorphin (Hosobuchi et al., Commun. Psychopharmacol. 2:33, 1978), are endogenous analgesics that can modulate pain transmission at the spinal cord (Jessel et al., Nature 268:549, 1977). That is they are natural pain inhibitors. Enkephalinergic neurons and opiate receptors can be found in the superficial layers of the dorsal horn (Horfelt et al., PNAS 74:081, 1977), and stimulation of these neurons result in an opiod peptide mediated inhibition of the Substance P containing C-type fibers (Woolf & Fitzgerald, Neurosci. Lett. 29:67, 1982). Furthermore, administration of enkephalim and beta-endorphin to the spinal cord can depress nociceptive pain transmission responses (Otsuka & Yanagisawa, J. Physiol. 395:255, 1988).

In human beings, Substance P and enkephalin containing neurons can be detected in the dorsal horn of the spinal cord as early as five weeks following conception, using the technique of immunohistochemical staining (Luo et al., Neuroscience 27:989, 1988). High density of Substance P containing neurons can also be found in areas of the fetal brain that are associated with pain perception (Picket et al., J. Comp Neurol 193:805, 1980; Nomura et al., Brain Res. 252:315, 1982. See also, Yew, D.T. et al., Neuroscience, 34:491, 1990). Therefore, the basic mechanisms for

transmission of pain signals and the natural analgesics for the attenuation of pain signal transmission from the periphery to the brain are in place early during fetal development. This is confirmed by the study of Giannakoulopoulos et al., (Lancet 344:77, 1994), in which they measured the fetal plasma cortisol and beta-endorphin response to intrauterine needling. In this study it was shown that the fetal plasma concentrations of cortisol and beta-endorphin both increased significantly following fetal blood sampling or intrauterine blood transfusions by needling the fetal infra-abdominal portion of the umbilical vein.

In contrast, in cases where the needling was performed into the umbilical vein at the placental cord insertion outside of the baby's abdomen, no increase in cortisol of beta-endorphin was detected in the baby's plasma. Since the elevation of plasma cortisol and Beta-endorphin are known to correlate to the body's stress response to painful stimuli in adults (Lacoumenta et al., B. R., Jr., Anaesth. 59:713, 1987), the hormonal changes in the fetus are thought to be a response caused by the stress of a painful stimulus.

The morphological substrate (the necessary pieces) for pain detection in the spinal cord exists at very early developmental stages.[25] At twelve weeks gestation, the thalamus, third ventricle, midbrain, brain stem, and cerebellar hemispheres are developed and basic structure, apart from changes in physical size, will go unchanged

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[25] Rizvi, T.; Wadhwa, S.; and Bijiani, V. "Development of Spinal Substrate for Nociception" *Pain 4* (1987-suppl.); S195.

throughout the rest of fetal and post-natal development.[26] At seven weeks, cutaneous sensory nerve fibers and interneurons of the spinal cord[27] are present.

Neuronal multiplication occurs mainly from the tenth to twentieth gestational weeks, after which no new nerve cells are formed, though neuronal arborization and the information and reorganization of synapses continues until adulthood. Somatosensory functions are developed at an early stage. The pain threshold is assumed to be lower in the fetus than in the adult. In man, general fetal movements appear from the eighth gestational week and more complex movements, such as sucking, swallowing, and breathing during the tenth to twelfth gestational weeks. These movements are generated by neuronal networks.[28]

The unborn child has the ability to open his jaw, move his tongue and even hiccup at 8 to 10 weeks[29] Movement

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[26] Filly, R.A. "Sonographic Anatomy of the Normal Fetus" In *The Unborn Patient* 2nd ed., ed. Harrison et al., 92-130, Phila.: W.B. Saunders Co., 1991, at 122.

[27] Anand, K.J.S.; and Hickey, P.R. "Pain and Its Effects in the Human Neonate and Fetus," *N Engl J Med* 317 (1987); 1321-1329, at p. 1322.

[28] Lagercrantz, H., et als. "Functional Development of the Brain in the Fetus and the Infant" *Lakartidningen* 88 (1991): 1880-1885.

[29] deVries, J.I.P., Visser, G.H.A., and Prechtl, H.F.R., "The Emergence of Fetal Behavior. I Qualitative Aspects," *Early Human Development*, 7 (1982), 301-322. "In this pattern of movement the hand slowly touches the face, the fingers frequently extend and flex. Insertion of the fingers into the mouth can only vary rarely be seen accurately." (Hand-face contact firs [sic] occurs 10 to 12 postmenstrual weeks, Fig. 9, p. 311)

by the fetus away from cutaneous stimulation,[30] and brain activity,[31] has been observed by the eighth week. At 8 weeks, local stimuli may elicit the following movements: squinting, opening the mouth, partial finger closure, and plantar flexion of the toes[32] The first detectable brain activity in response to noxious, or pain, stimuli is elicited in the thalamus of the brain between the ninth and tenth weeks.[33] A basic sensory response loop is clearly present by about eight weeks of gestation. There are particular neurological structures that are necessary for the sensation of pain, the thalamus, bundles of nerve pathways within the brain stem, pain receptive nerve cells, and neural pathways. These structures are at least partially in place during the time period between 8 and 13½ weeks. Doctors V.J. Collins, S.R. Zielinski, and T.J. Marzen have written that, " . . . it may be concluded with reasonable medical certainty that the fetus can sense pain at least by 13½ weeks."[34]

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[30] Flower, M.J. "Neuromaturation of the Human Fetus," *J Med Philos* 10(1988): 237-351.

[31] Goldenring, J.M., "Development of the Fetal Brain," *N Engl J Med* 307 (1982); 564; Flower, M.J. *supra.*

[32] Cunningham, F.G., et al., *Williams Obstetrics*, 19th ed. (Norwalk, CT: Appleton & Lange, 1993), 1982. "At 10 weeks [postmenstrual-Ed.], local stimuli may evoke squinting, opening the mouth, partial finger closure, and plantar flexion of the toes."

[33] Cunningham, F.G., et al., *Williams Obstetrics*, 19th ed. Norwalk, CT: Appleton & Lange, 1993), 193. "Movements of the fetal chest wall have been detected by ultrasonic techniques as early as 11 weeks gestation [postmenstrual-Ed.]. From the beginning of the fourth month, the fetus is capable of respiratory movement sufficiently intense to move amniotic fluid in and out of the respiratory tract."

[34] Collins, V.J., M.D., Zielinski, S.R, M.D., and Marzen, T.J.M., "Fetal Pain and Abortion; The Medical Evidence," *Studies in Law & Medicine*, No. 18. (1984) [See also: A.C. Guyton, *Textbook of Medical*

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Nature prepares the nervous system first so that all other systems can develop and function properly.[35]

Many behaviors characteristic of newborns are clearly present in children with anencephaly[36](children born without a developed cerebral cortex).[37] Prior to this observation, these behaviors had erroneously been ascribed to cerebral cortex activity.[38] After birth, anencephalic newborns breathe spontaneously, exhibit a grasp response,[39] and respond to noxious stimuli known to cause pain by avoidance, withdrawal and crying.[40] They also breathe,

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Physiology (Philadelphia; W.B. Saunders Company, 1976), 666; and H.D. Patton, J.W. Sundsten, W.E. Crill, P.D. Swanson, eds. *Introduction to Basic Neurology* (Philadelphia; W.B. Saunders Company, 1976), 198.] "Certain neurological strictures are necessary to pain sensation; pain receptive nerve cells, neural pathways, and the thalamus [two egg-shaped masses of nerve tissue located deep within the brain at the top of the brain-stem] . . . the neurological structures are at least partially in place between 8 and 13½ weeks, it seems probable that some pain can also be felt during this time of gestation . . . as evidenced by the aversive response of the human fetus, it may be concluded with reasonable medical certainty that the fetus can sense pain at least by 13½ weeks."

[35] Kalvger, G., and Kalvger, M.F., Human Development: *The Span of Life*, St. Louis: The C.V. Mosby Company, 1974, at p. 35.

[36] The Medical Task Force on Anencephaly, (Stumph, D.A., et al.) "The Infant with Anencephaly" *N Eng J Med* 322 (1990): 669-674.

[37] Shewmon, D.A., et als., "The Use of Anencephalic Infants as Organ Sources: A Critique," JAMA261 (1989): 1773-1781.

[38] The Medical Task Force on Anencephaly, supra.

[39] Ashwal, S., et als., "Anencephaly: Clinical Determination of Brain Death and Neuropathologic Studies," *Pediatr Neurol* 6 (990); 233-239.

[40] Stumpf, D.A., Med Task Force on Anencephaly, "The Infant with Anencephaly," *N Eng J Med* 322(1990): 669-674. Shewmon, D.A., et als., "The Use of Anencephalic Infants as Organ Sources: A Critique," JAMA261 (1989): 1773-1781. Van Assche, F.A. "Anencephalics as Organ Donors," *Am J Obstet Gynecol* 163 (990): 599-600; Ashwal, S., et

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cough, hiccup, smile, grimace, yawn, and suck. In a recent study of twelve anencephalic infants, all twelve responded to pain, had an exaggerated sustained response to touch, evidenced spontaneous movement, and breathed spontaneously.[41] Seven of the twelve responded to a stimulation of their mouth area by turning towards the stimulus and sucking.[42] These behaviors are also present in the normal fetus between 6 to 11 weeks gestation. Spontaneous movement in the normal fetus begins between six and seven and one-half weeks gestation.[43] Stimulation of the mouth area resulting in a response towards the stimulus is seen at 9 weeks gestation and sucking at 11 weeks.[44] The fetus of 6 to 11 weeks gestation is neurologically developed at least equivalent to the twelve anencephalic children described above which are capable of experiencing pain.

Thus, it is clear that the neurological structure necessary for pain detection is in place very early (between 6 to 11 weeks post-conception) and neuropeptides, which both transmit and suppress pain, are present as early as five or six weeks post-conception. The question is essentially reduced to whether it is necessary to have a functioning

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als., "Anencephaly: Clinical Determination of Brain Death and Neuropathologic Studies," *Pediatr Neurol* 6 (990); 233-239.

[41] Ashwal, supra.

[42] *Ibid*

[43] deVries, J.I.P., Visser, G.H.A., and Prechtl, H.F.R., "The Emergence of Fetal Behavior. I Qualitative Aspects," *Early Human Development*, 7 (1982), 301-322. Flower, M.J. "Neuromaturation of the Human Fetus," *J Med Philos* 10 (988): 237-351.

[44] Giannakoulopoulos, X., Sepulveda, W., Kourtis, P., Glover, V., and Fisk, N.M., "Fetal Plasma Cortiso and B-Endorphin Response to Intrauterine Needling," *Lancet* 1994; 344:77-81.

cerebral cortex in order to "experience" or be aware of the pain transmission.

2. Whether a Functional Cortex Is Necessary for the Unborn Child to Experience Pain

It is clear that the unborn child reacts to his or her environment and reacts to painful stimuli during the first trimester. However, it is thought that simple reflex reactions can occur without conscious awareness and involvement of the brain. A noxious stimulus would cause a signal to be sent to the spinal cord via a sensory nerve. This signal can be relayed to the muscle that responds without the transmission traveling beyond the spinal cord. Some describe this as a "knee jerk" reaction because no high cerebral functioning is involved. There is no question that in the first trimester everything is in place for the unborn child to have single reflex responses to stimuli including stimuli that are ordinarily painful.

There are more complex reflex reactions. These involve situations in which the spinal cord sends nerve signals to the brain stem and structures in the lower brain. These low brain areas organize a different kind of response that is more sophisticated and coordinated, such as crying. Many scientists maintain that this kind of complex "reflex" is not evidence, standing alone, that the human being experienced pain. However, it has been suggested that if aspects of awareness are located in these lower structures of the brain in children in early utero, some form of perception occurs and a pain experience can occur. Since there is disagreement on this, it is necessary to examine the evidence. In reviewing this question, the Task Force reviewed the work, published by a Royal

Commission of the British House of Lords, "Human Sentience Before Birth," issued in 1999. That commission heard evidence from renowned experts in the field.

We are struck by the fact that doctors and scientists draw a distinction between "feeling" painful stimuli and "conscious" awareness of it. It is the "consciousness" of pain that some experts, like Dr. Rosen, hypothesize requires upper brain and cortex functioning. For policy considerations, the Legislature may not be willing to draw such a distinction, but since some of the medical experts attach such significance to it, we review the question of a need for a functioning cortex in order for an unborn child to experience pain.

Once a human being has a functioning cortex, the nervous system carries messages to the cortex and the human being is capable of being aware of the pain and can organize deliberate actions in response to the stimulus.

The report issued by the Commission of the British House of Lords concluded that evidence from hydranencephalic children (cerebral hemispheres of the brain are missing) and anencephalic babies (babies with little or no hypothalamohypopophyseal systems) showed that while the children with these conditions do not have a functioning cortex, they demonstrate a wide range of complex behaviors associated with the cortex, including conditioning, ability to be consoled, and associative learning.[45]

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[45] Shewmon, D.A., et al., "The Use of Anencephalic Infants as Organ Sources: A Critique," JAMA261 (1989): 1773-1781.

In one case, a 21-month-old child with hydranencephaly developed behavior and learning normal for a child that age.[48] He spoke, played with toys, was potty trained, etc. The literature concerning anencephalic babies with functioning hypothalamohypopophyseal systems indicates they have reactions to painful stimuli.[49] This indicates that a human being can make responses to noxious stimuli even without a functioning cortex. There is also evidence from experience with anencephalic children that some of the functions of the cortex are performed by the lower centers of the brain in the absence of the cortex. A noted British scientist testified before the Royal Commission that this evidence may well disprove the latest in a long line of disproven assumptions about pain and that even the fetus at the earliest ages may experience pain. There is evidence that the thalamus, an area of the lower brain, may "support a form of awareness and consciousness." (Menses S. (1983) "Basic Neurobiologic Mechanisms of Pain and Analgesia," *Amer J of Med*, 75, 4-14.)

In a paper that Dr. Rosen coauthored (Lee, S.J., et al., "Fetal Pain, a Systemic Multi disciplinary Review of the Evidence," *JAMA*, Vol. 294, 8 Aug. 2005), that recognizes that brain activity is detected at 8 to 10 weeks post-conception, it states: "The histological presence of thalamocortical fibers (from which EEG readings can be obtained) is insufficient to establish capacity for pain perception. These anatomical structures must also be functional." This hypothesis is, however, a bit circular in

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[48] Lorler, J. (1965) "Hydanencephaly with Normal Development," *Developmental Medicine and Child Neurology* 7, 628-633.

[49] Van Assche, F.A. "Anencephalics as Organ Donors," *Am J Obstet Gynecol* 163(1990): 599-600.

reasoning. Dr. Rosen, et al. assumes the need for cortical functioning and then says that the evidence of brain functioning associated with consciousness cannot be significant because it is in a child without a functioning cortex.

We find it more persuasive that the unequivocal reactions to painful stimuli and the learning capabilities of the hydranencephalic and anencephalic babies indicate that lower brain centers – in the absence of a functioning cortex – have a capacity to function in a more complex fashion, and that these children possess the capacity for awareness and experiencing pain.

Based upon the comprehensive analysis contained in the report by the Commission of Inquiry into Fetal Sentience, our review of the literature, the testimony before the Task Force, and other evidence received, we conclude:

1. Concerning physical neurological development:

a. Beginning at 5 weeks post-conception the unborn child responds to touch and the development of the brain is well under way;

b. Brain activity can be detected at 7 weeks post-conception;

c. The lower brain begins activity around 10 weeks post-conception; and

d. The higher areas of the brain are active at 23 weeks post-conception, and at 24 weeks the neurological signals can be processed from the thalamus to the cortex.

2. Concerning the child's ability to experience pain:

a. It is virtually universally accepted by science and medicine that the unborn child can experience pain by 24 weeks post-conception;

b. It is probable that the unborn child can experience pain at least by 20 weeks post-conception;

c. It is more likely than not that the unborn child can experience pain without a functioning cortex, as long as the lower brain is developed to the same extent as that of hydranencephalic babies, which is around eleven weeks post-conception. There is a significant and growing body of evidence that the unborn child experiences pain as early as 11 weeks post-conception;

d. Some scientists contend, although it has not been proven, that the unborn child may be able to experience pain as early as 7 weeks post-conception; and

e. The fact the unborn child can "feel" painful stimuli before the ability to be conscious of that pain is relevant to matters of public policy.

I. Whether The Need Exists For Additional Protections Of The Rights Of Pregnant Women Contemplating Abortion

Considering the scope of the record, especially the powerful and moving testimonies of the almost two thousand women, there is no question that there is need for additional protections of the rights of pregnant women.

The Task Force has found that abortion adversely affects the rights, interests, and health of women. It involves the irrevocable termination of one of a woman's most important fundamental liberties protected by the United States Constitution, her fundamental right to her relationship with her child. The fact that some women may feel that their circumstance prevents them from exercising this right must not be allowed to obscure the fact that this fundamental right demands respect and the greatest legal protections. It is only by these protections that the pregnant mother can realize and freely exercise her right to have a relationship with her child. Likewise, these protections are necessary to ensure that any decision to give up her fundamental right is an informed and voluntary decision.

Any policies implemented by this, or any other state, must begin with the recognition that human life has intrinsic value. We find it to be self-evident (and supported by the record) that a mother's relationship with her child, at every moment of life, has intrinsic worth and beauty for the mother and child alike. It must be with these truths in mind, that our state, or any state, must act to guarantee that the pregnant mother's fundamental right to her relationship with her child enjoys strong legal protections.

For too many women, abortions are the result of uninformed consent. The mother's ability to freely exercise her right to her relationship with her child depends upon new legal protections to ensure that if a woman wants to relinquish her right, it is done under circumstances that are unequivocally informed.

The mother, of course, has a duty and a right to make decisions about the welfare of her child at every age. We

find it untenable that the law allows a mother to be implicated in the termination of the life of her own child. Since the abortion providers repress information necessary for a full disclosure of this circumstance, there is a clear need for additional protections of the mother, not just to assist in helping make that decision better informed, but to prevent her short- and long-term suffering.

The ability of a pregnant mother to freely exercise her right to keep her relationship with her child depends entirely upon the laws protecting her right. This is so regardless of the source of such pressures, whether it be from the father of the child, a family member of the pregnant woman, an abortion provider, or from a culture that promotes abortion and the termination of the mother's rights because it is easier than assisting her in her time of need. We find that there is a clear need for additional protection of the mother's fundamental rights to her relationship with her child against pressures of third parties.

As we have seen, the abortion procedure is inherently dangerous to the psychological and physical health of the pregnant mother. There is a need for better protection of the mother's health.

The current legal policy found in our country today, that protects the destruction of her relationship with her child (i.e., abortion) instead of her relationship with her child is a denigration of women. We find that we should, as state policy, promote motherhood and counter the claim that the exclusive "right" to abortion liberates women.

The sad and compelling testimonies of the women who have informed us of the reality of their experiences must not be ignored. Their courage in stepping forward to

educate us on their suffering must be given meaning. The additional protections discussed above would have protected them, and will help protect other women from similar harm.

We recognize that legislative action short of a ban on all abortions[50] will be insufficient to prevent all harm from abortion. However, the protections listed above have the potential to reduce the number of abortion decisions by as much as 98%. (See Section II-A of this Report.)

J. Whether There Is Any Interest Of The State Or The Mother Or The Child Which Would Justify Changing The Laws Relative To Abortion

The testimony presented to this Task Force demonstrates the need to change laws relative to abortion. As stated previously, the current laws do not adequately protect the mother or child, and have resulted in great harm to women and the deaths of thousands of South Dakota children.

We conclude that the most fundamental assertions made by the U.S. Supreme Court in *Roe v. Wade*, 410 U.S. 113 (1973), upon which its decision was based, are now known to be false or inaccurate. Of these, none are more damning than the position that it could not be determined when life begins. This statement of *Roe* has caused confusion in the lives of women and has destroyed the lives of their children. Because of this statement, Planned Parenthood

[50] The Task Force has not examined the question of whether any exceptions are necessary – i.e., whether an abortion is ever medically necessary, even to save the life of the mother.

tells women that there is only "tissue" inside a pregnant mother and refuses to inform women of the biological fact that an abortion will terminate the life of a human being.

It is now clear that the mother's unborn child is a whole human being throughout gestation and that she has an existing relationship with her child.

Our nation was founded both on the proposition that human life is a gift of immeasurable worth and on the precept of equal rights for all human beings. The Declaration of Independence put this message in words that stir the heart:

> "We hold these truths to be self-evident: that all men are created equal; that they are endowed by their creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness . . . "

The fact that the unborn child is a whole separate unique living human being is not without significance for our culture and our state. The right to live does not derive from government. If it is truly, as we know it to be, an intrinsic natural right, it is enjoyed by every single human being, no matter how poor or wealthy, strong or weak, age of maturity, or state of dependence. We find that the unborn child possesses intrinsic rights that are in perfect harmony with and equal to the intrinsic rights of that child's mother.

As for the sovereign state of South Dakota, we recognize that the State has both the right and the unqualified duty to protect every human being and their personal intrinsic rights, including the pregnant mother's natural intrinsic right to her relationship with her child, and the child's intrinsic right to life. These cherished rights are

compatible and harmonious, regardless of the unfortunate circumstances that sadly invoke thoughts that she may not be able to avail herself of her great rights.

It is the law, as it represents the collective interests of the individuals for whom the law exists, that must protect life. Long ago, our law protected life and the mother's beautiful interest in her child's life. It protected innocent children over the misguided philosophies and trends in social thought, which come and go.

If there are any self-evident and universal truths that can act for the human race as a guide or light in which social and human justice can be grounded, they are these: that life has intrinsic value; that each individual human being is unique and irreplaceable; that the cherished role of a mother and her relationship with her child, at every moment of life, has intrinsic worth and beauty; that the intrinsic beauty of womanhood is inseparable from the beauty of motherhood; and that this relationship, in its unselfish nature, and, in its role in the survival of the human race, is the touchstone and core of all civilized society. This relationship, its beauty, its survival, its benefits to the mother and child, and its benefits to the State of South Dakota, and society as a whole, all rest in the self-evident truth that a mother is not the owner of her child's life, she is the trustee of it.

The state, the mother, and the child all have interests that justify changing the laws of the state of South Dakota to protect the child's life, first and foremost, to protect the mother-child relationship, and to protect the mother's health. In fact, the state not only has an interest, it has a duty to change the law. Because of this duty, the state cannot continue to protect the abortion practice, for the

right and duty to preserve life cannot co-exist with a right to destroy it. Likewise, the right and duty to preserve and protect the cherished relationship between mother and child cannot co-exist with a right to destroy it.

III. PROPOSALS FOR ADDITIONAL LEGISLATION

The State of South Dakota has an interest and a duty to protect every citizen's intrinsic rights, most importantly the right to life. This duty includes protecting an unborn child's intrinsic right to life and the mother's natural intrinsic right to a relationship with her child, along with the protection of the mother's health.

The Task Force concludes that to fully protect the rights, interests, and health of the mother and the life of her unborn child, a ban on abortions is required.[51] We recommend that the Legislature examine the method and timing of such a ban.

The Task Force is aware of the arguments by which *Roe v. Wade* and related decisions of the U.S. Supreme Court have determined that the Constitution prohibits a state from banning abortion. However, it is clear to us that abortion terminates the life of a child and the relationship with his or her mother and is an unsafe procedure that places women at significant risk for psychological and physical harm. In fact, this decision has already allowed the termination of the lives of well over 40 million children

[51] The Task Force has not examined the question of whether any exceptions are necessary – i.e., whether an abortion is ever medically necessary, even to save the life of the mother.

and has harmed women and families across our state and nation.

Further, there are new facts and appreciations of those facts, as discussed in this Report, that disprove many factual assumptions made by the Court in *Roe v. Wade*, requiring that the Supreme Court reconsider its *Roe* decision.

Thus, while we recommend, and even urge, a legal ban on abortion, we nonetheless propose the following additional legislation in an effort to lessen the loss of life and harm caused by abortion until such a ban can be implemented:

1. Amend the State Constitution to include provisions that provide the unborn child, from the moment of conception, with the same protection of the law that the child receives after birth and also provide protections for the mother-child relationship.

2. Require the abortion doctor to personally complete, while questioning the woman in confidence, a written form provided by the State that specifically asks the woman if she is being pressured into having the abortion. If she indicates that she is being pressured, require that the abortion shall not be performed.

3. Require the abortion doctor to verify the age of the patient and the father of the unborn child, and require the abortion doctor to report to the appropriate authorities any sexual activity that is contrary to South Dakota law.

4. Require strict reporting requirements concerning the reasons a woman is seeking an abortion. The report must contain a written disclosure by the doctor as to whether or not continuing the pregnancy threatens the health or life of the woman. If the threat exists, the doctor must detail the nature of the threat.

5. Require that the State create a written disclosure form that requires the abortion doctor to provide the mother, in person, with all of the risks of abortion to the mother and her unborn child. Require that this disclosure take place before the woman pays for the abortion and before she is taken to the procedure room. Require that the mother must also be provided sufficient time for personal review and discernment.

6. Require that no abortion can be performed unless the pregnant mother, prior to making an appointment for an abortion, receives counseling and disclosures about the nature of the risks and the alternatives to abortion by a pregnancy care center that does not perform abortions.

7. Require that the abortion doctor show the pregnant mother a quality ultrasound image of her unborn child before the procedure is performed and prior to her signing the consent form on which she indicates that she viewed the ultrasound.

8. Require the abortion doctor to have hospital privileges at a hospital within 30 miles of the location where the abortion is performed.

9. Require that the South Dakota Vital Statistics include disclosure of all facilities that perform abortions in South Dakota as well as the number of abortions performed per year at each facility.

10. Strengthen laws so that abortion facilities are thoroughly regulated and regularly inspected by the South Dakota Department of Health or other proper authority.

11. Strengthen the child support laws, including the requirement that the father of an unborn child support the mother and their unborn child during the pregnancy and thereafter.

12. Strengthen laws that provide financial and other support to pregnant women so that lack of support no longer compels a woman to seek an abortion.

13. Strengthen and clarify existing public policy regarding character development education pursuant to SDCL 13-33-6.1. Such clarifications should include a definition of sexual abstinence and a statement that abstinence education in South Dakota is to exclude contraceptive-based sexuality education.[52]

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[52] Although the Task Force was not mandated to discuss and make recommendations regarding sexuality education, this issue was brought to the attention of the Task Force throughout the testimony, and was discussed extensively. It is clear that sexuality education and abortion are undoubtedly connected. We find that abstinence until marriage education based upon character development is foundational in decreasing unplanned pregnancies and sexually transmitted diseases including HIV/AIDS.

(Continued on following page)

14. Any other legislation that has as its goal to decrease the number of abortions in our State.

The state of South Dakota through its various entities has campaigned to educate our youth to "Just Say No" to harmful activities, such as smoking and drugs, and if the minor is participating in such a harmful activity to simply stop. This message given to our youth is clear, concise, and without contradictions.

We find that almost everyone can agree that sexual activity for minors is harmful. To promote a message of "comprehensive sex education" (i.e. sex education based upon the promotion of contraception) is confusing and dangerous. It is inconsistent with the message of "Just Say No" since abstinence from sexual activity is the only completely reliable means of preventing pregnancy and disease. The message communicated to youth by contraceptive-based sex education is that they are not capable of controlling their emotions and instincts, thus the need for contraception. Further, contraceptive sex education instills a mentality that abortion is a "back up" for failed contraception, thus the promotion of "emergency contraception" drugs which can act as early abortifacients. No objective studies of contraceptive sex education programs have proven to result in the reduction of unplanned pregnancies and abortions. Conversely, studies have shown that contraceptive sex education results in an increase in sexual activity.